

No. 13805

United States
Court of Appeals
for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

THOMAS H. BRODHEAD and ELIZABETH S.
BRODHEAD,

Respondents.

Transcript of Record

Petition to Review Decisions of The Tax Court
of the United States

FILED

JUL 23 1953

PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioners:

MILTON CADES, Esq.,
URBAN E. WILD, Esq.

For Respondent:

CHARLES W. NYQUIST, Esq.

Docket No. 29391

THOMAS H. BRODHEAD and ELIZABETH S.
BRODHEAD, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1950

- July 3—Petition received and filed. Taxpayer notified. Fee paid.
- July 3—Request for Circuit hearing in Honolulu, T. H., filed by taxpayer. 7/17/50 Granted.
- July 3—Notice of appearance of Milton Cades, Esq., and Urban E. Wild, Esq., as Counsel, filed. Copy served.
- July 5—Copy of Petition served on General Counsel.
- Aug. 8—Answer filed by General Counsel.

1950

Aug. 10.—Copy of Answer served on taxpayer.
Honolulu, T. H.

1951

Mar. 12—Hearing set June 13, 1951, Honolulu, T.H.

May 22—Hearing changed to June 15, 1951, Honolulu, T. H.

June 20—Hearing had before Judge Arundell on merits. Proceedings consolidated for hearing. Stipulation of facts, with exhibits 1 through 45, filed. Petitioner's brief, August 29, 1951. Respondent's brief, October 15, 1951. Petitioner's reply, November 29, 1951.

June 27—Hearing had before Judge Arundell. Proceedings reopened to receive additional exhibits on behalf of respondent.

July 18—Transcript of Hearing, 6/20/51 filed.

Aug. 27—Brief filed by taxpayer. 8/28/51 Copy served.

Oct. 15—Reply Brief filed by General Counsel. Copy served.

Oct. 22—Motion for extension to January 28, 1952, to file reply brief, filed by taxpayer. 10/23/51—Granted.

1952

Jan. 31—Reply brief filed by taxpayer. Copy served.

July 7—Findings of fact and opinion rendered. Judge Arundell. Decision will be entered under Rule 50. Copy served.

Oct. 9—Respondent's computation for entry of decision filed.

1952

Oct. 19—Hearing set November 19, 1952, at Washington, D. C., on respondent's computation.

Oct. 30—Consent to settlement filed by taxpayer.

Oct. 31—Decision entered. Judge Arundell. Div. 7.

1953

Jan. 19—Petition for Review by U. S. Court of Appeals for the Ninth Circuit, filed by General Counsel.

Feb. 6—Proofs of Service on Counsel and Taxpayers filed.

Feb. 12—Motion for extension of time to 4/17/53 to transmit record, filed by General Counsel.

Feb. 13—Order extending time to 4/17/53 to prepare, transmit and deliver record, entered.

April 2—Statement of Points filed by General Counsel, with statement of service thereon.

April 2—Statement Re Diminution of Record filed by General Counsel, with statement of Service thereon.

dress is 843 Kaahumanu Street, Honolulu, T. H. The returns here involved were filed with the Collector for the Honolulu Division.

II.

The notice of deficiency, a copy of which is attached and marked "Exhibit A", was mailed to the petitioners on February 7, 1950.

III.

The taxes in controversy are income taxes for the calendar year 1948. The deficiency asserted is \$1,177.22, the entire amount of which is in controversy.

IV.

The determination of tax set forth in said notice of deficiency is based on the following errors:

1. The Commissioner of Internal Revenue has erred in the determination that the special partnership of Ace Distributors, formerly known as T. H. Brodhead Company, formed under partnership agreement, dated September 30, 1942, as amended on February 28, 1943, and February 28, 1947, composed of Thomas H. Brodhead as a general partner, and the Elizabeth S. Brodhead Trust as a special partner, is not a valid partnership for income tax purposes, and that all income of the said partnership of Ace Distributors for the taxable year 1948 is taxable to the petitioners.

2. The Commissioner of Internal Revenue has erred in determining that the income from the partnership of Ace Distributors, reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust for the taxable year 1948, is eliminated from such fiduciary return and is taxable to the petitioners.

3. The Commissioner of Internal Revenue has erred in the determination of the petitioners' income tax net income for the taxable year ended December 31, 1948 by adding thereto the sum of \$20,177.91, being the portion of a net capital gain from the sale of land and buildings made by the partnership of Ace Distributors (and reported on the partnership return for the fiscal year ended February 28, 1949) constituting income of the Elizabeth S. Brodhead Trust and returned by it for tax purposes and the tax thereon having been paid by said Trust.

4. The Commissioner of Internal Revenue has erred in the determination of the petitioners' income tax net income for the taxable year ended December 31, 1948 by decreasing the business income of petitioners for said year by the amount of \$16,-009.79 arrived at by attributing to petitioners that portion of the losses of Ace Distributors constituting losses of the Elizabeth S. Brodhead Trust and returned by it for tax purposes and used in the computation of the tax liability of said Trust.

5. The Commissioner of Internal Revenue has erred in determining that the income tax liability for the petitioners is \$4,062.80 for the taxable year ended December 31, 1948.

6. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$1,177.22 or of any part thereof in petitioners' income tax for the taxable year ended December 31, 1948.

V.

The facts upon which the petitioners rely as the basis for this proceeding are as follows:

1. The petitioner, Elizabeth S. Brodhead, on February 28, 1943, settled the Elizabeth S. Brodhead Trust by a transfer to the Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, and to Mortimer J. Glueck, a resident of the Territory of Hawaii, as Trustees, of the sum of \$10,000.00 under the herein-after-mentioned terms and conditions.

2. By the terms of the Elizabeth S. Brodhead Trust Agreement, the interest of the Thomas H. Brodhead Trust as a special partner in the partnership of T. H. Brodhead Company was to be purchased by the said Elizabeth S. Brodhead Trust, the income from which interest was to be accumulated until the beneficiaries, the children of the petitioners, reached the age of twenty-three, at which time the Trust was to be terminated, and the corpus and accumulated income was to be distributed to the beneficiaries.

3. By the terms of the Elizabeth S. Brodhead Trust, the petitioner, Elizabeth S. Brodhead, completely divested herself of all right, title or interest in the Trust Estate, both corpus and income, the same being at all times held by the Trustees, to wit, the Bishop Trust Company, Limited, and Mortimer J. Glueck who is unrelated by blood or marriage to the petitioner, Elizabeth S. Brodhead.

4. By the terms of the Elizabeth S. Brodhead Trust, Elizabeth S. Brodhead has no right or power, discretionary or otherwise, to make any distribution of income or principal, current or accumulated, in any manner whatsoever, such right of disposition being confined to the terms of the Trust instrument, and to be exercised, where permissible under the terms of the Trust, within the sole direction of the Trustees.

5. By the terms of the Elizabeth S. Brodhead Trust, Thomas H. Brodhead, one of the petitioners herein, has no interest in the Elizabeth S. Brodhead Trust and has no right or power, discretionary or otherwise, to make any distribution of income or principal, current or accumulated, in any manner whatsoever.

6. On September 30, 1942, the petitioner, Thomas H. Brodhead, and the Thomas H. Brodhead Trust entered into an agreement of special partnership in accordance with and under the laws of the Territory of Hawaii, by which agreement the petitioner, Thomas H. Brodhead, became a general partner, and the Thomas H. Brodhead Trust became a special partner in the partnership of T. H. Brodhead Company.

7. On February 28, 1943, the special partnership agreement between the petitioner, Thomas H. Brodhead, and the Thomas H. Brodhead Trust was amended in accordance with the laws of the Territory of Hawaii. By virtue of the amendment, the Thomas H. Brodhead Trust withdrew as a special

partner, and the Elizabeth S. Brodhead Trust was admitted as a special partner in the special partnership of T. H. Brodhead Company, which partnership was in conformity with the laws of the Territory of Hawaii and was a bona fide and valid partnership for all purposes.

8. On February 28, 1947, the special partnership agreement between Thomas H. Brodhead and the Elizabeth S. Brodhead Trust was amended in accordance with the laws of the Territory of Hawaii, by virtue of which amendment the special partnership composed of Thomas H. Brodhead as general partner, and the Elizabeth S. Brodhead Trust as special partner, changed the partnership name from the T. H. Brodhead Company to Ace Distributors.

9. The Elizabeth S. Brodhead Trust for the fiscal year ended September 30, 1948, filed a return in which was computed the amount of \$5,487.84 as its loss from its interest in the partnership of Ace Distributors, the loss so computed being properly computed on the said income tax return of the said Elizabeth S. Brodhead Trust.

10. The gross income of the Elizabeth S. Brodhead Trust for the fiscal year ended September 30, 1949, included income from the partnership of Ace Distributors in the amount of \$2,110.47, computed on the basis of a loss from its interest in the partnership of Ace Distributors in the amount of \$7,978.48 and a long term capital gain of \$10,088.98, being its share of the capital gain of the Ace Dis-

tributors, all of which items were properly computed by the Elizabeth S. Brodhead Trust, and the net income of \$2,110.47 was properly returned by said Elizabeth S. Brodhead Trust for the fiscal year ended September 30, 1949, the income tax being computed thereon, and the tax thereon being properly paid by the said Elizabeth S. Brodhead Trust.

Wherefore, the petitioners pray that this Court may hear the proceeding and determine that there is no deficiency due from the petitioners for the year 1948.

/s/ THOMAS H. BRODHEAD

/s/ ELIZABETH S. BRODHEAD

843 Kaahumanu Street,
Honolulu, T. H.

Territory of Hawaii,
City and County of Honolulu—ss.

Thomas H. Brodhead and Elizabeth S. Brodhead, being duly sworn, say that they are the petitioners above-named; that they have read the foregoing petition, or had the same read to them, and are familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those they believe to be true.

/s/ THOMAS H. BRODHEAD

/s/ ELIZABETH S. BRODHEAD

Subscribed and sworn to before me this 30th day of June, 1950.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires 6-30-53.

EXHIBIT A

Form 1230

SN-IT-1

IT:FC:LMJ-150D

Feb. 7, 1950

Mr. Thomas H. Brodhead and Mrs. Elizabeth S. Brodhead, Husband and Wife,
843 Kaahumanu Street, Honolulu, T. H.

Dear Sir and Madam:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1948 discloses a deficiency of \$1,177.22 as shown in the attached statement.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 150 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 150th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D.C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, P.O. Box 421, Honolulu 9, T.H., for the attention of IT:FC:LMJ. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner

/s/ By H. A. PETERSON,

Internal Revenue Agent in Charge

Enclosures: Statement, Form 1276, Form of Waiver

STATEMENT

Year	Deficiency
1948	\$1,177.22

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated July 22, 1949 and to your protest dated October 3, 1949.

A copy of this letter and statement has been mailed to your representatives, Cameron & John-

stone, P.O. Box 2906, Honolulu 2, T.H., in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1948

Adjustments to Net Income

Net income as disclosed by return.....	\$17,015.08
Unallowable deductions and additional income:	
(a) Net capital gains	20,177.91
	<hr/>
Total	\$37,192.99
Nontaxable income and additional deductions:	
(b) Business income decreased	16,009.79
	<hr/>
Net income adjusted	\$21,183.20

Explanation of Adjustments

(a) It has been determined that Ace Distributors (formerly T. H. Brodhead Company) an alleged partnership between Thomas H. Brodhead and the Elizabeth S. Brodhead Trust, is not a valid partnership for Federal income tax purposes, and that all income from Ace Distributors (formerly T. H. Brodhead Company) is taxable to you, with the result that the income or loss from Ace Distributors (formerly T. H. Brodhead Company) reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust is eliminated from such fiduciary return.

In view of this determination, the income or loss from Ace Distributors (formerly T. H. Brodhead Company) which you reported on a fiscal year basis in line with the fiscal year basis used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns. Accordingly, a portion of the income or loss reported by the alleged partnership, Ace Distributors (formerly T. H. Brodhead Company) for the fiscal year 3/1/47 to 2/29/48, and a portion of the income or loss reported by the alleged partnership, Ace Distributors (formerly T. H. Brodhead Company) for the fiscal year 3/1/48 to 2/28/49, is allocated to the calendar year 1948, based on the respective number of days in 1948, as computed in item (b) below.

The net capital gain of \$20,177.91 from the sale of land and buildings, Kawaiaho Court, acquired in 1944 and sold in 1948, which was reported on the partnership return of the alleged partnership, Ace Distributors (formerly T. H. Brodhead Company) for the fiscal year ending 2/28/49, is not subject to an allocation and is held to be taxable to you in 1948 when the sale took place.

(b) The computation of your revised business income or loss from the alleged partnership, Ace Distributors (formerly T. H. Brodhead Company) for the calendar year 1948 is as follows:

Ordinary net loss reported on partnership return for the fiscal year 3-1-47 to 2-29-48	\$ 5,487.84
Less: Prepaid insurance erroneously written off	143.80
	<hr/>
Ordinary net loss for fiscal year 3-1-47 to 2-29-48 revised	\$ 5,344.04
	<hr/>
Ordinary net loss reported on partnership return for the fiscal year 3-1-48 to 2-28-49—not changed	\$15,956.99
	<hr/>
Pro-rata portion of \$5,344.04 applicable to calendar year ending 12-31-48 (1-1-48 to 2-29-48): 60/366 of \$5,344.04.....	\$ 876.07
Pro-rata portion of \$15,956.99 applicable to calendar year ending 12-31-48 (3-1-48 to 12-31-48): 306/365 of \$15,956.99....	19,377.64
to 12-31-48): 306/365 of \$15,956.99.....	13,377.64
Revised business loss from Ace Distributors (formerly T. H. Brodhead Co.) for calendar year 1948.....	\$14,253.71
Business income from above sources reported on your 1948 return.....	1,756.08
	<hr/>
Business income decreased for the calendar year 1948	\$16,009.79

Computation of Tax

Net income adjusted	\$21,183.20
Less: Exemptions	3,000.00
	<hr/>
Income subject to tax.....	\$18,183.20
	<hr/>
One-half of \$18,183.20	\$ 9,091.60
	<hr/>
Tentative income tax on	
\$9,091.60	\$2,331.14
Less: Reduction	299.74
	<hr/>
Difference	\$2,031.40
Correct income tax liability (\$2,031.40x2) \$	4,062.80
Income tax liability disclosed by return,	
Account No. 301881	2,885.58
	<hr/>
Deficiency in income tax.....	\$ 1,177.22

[Endorsed]: T.C.U.S. Filed July 3, 1950.

[Title of Tax Court and Cause No. 29391.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioners admits and denies as follows:

I, II and III. Admits the allegations contained in paragraphs I, II and III of the petition.

IV and IV-1 to 6, inclusive. Denies that the Com-

missioner erred in the determination of the deficiency as alleged in paragraph IV of the petition and subparagraphs 1 to 6, inclusive, thereunder.

V-1 to 10, inclusive. Denies the allegations contained in subparagraphs 1 to 10, inclusive, of paragraph V of the petition.

VI. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal
Revenue

Of Counsel:

B. H. NEBLETT,
Division Counsel;

T. M. MATHER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Aug. 8, 1950.

The Tax Court of the United States

Docket No. 29392

THOMAS H. BRODHEAD and ELIZABETH S.
BRODHEAD, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Bureau symbols IT:FC:LMJ-150D, dated February 7, 1950, and, as a basis of their proceeding, allege as follows:

I.

The petitioners are individuals whose mailing address is 843 Kaahumanu Street, Honolulu, T. H. The returns here involved were filed with the Collector for the Honolulu Division.

II.

The notice of deficiency, a copy of which is attached and marked "Exhibit A", was mailed to the petitioners on February 7, 1950.

III.

The taxes in controversy are income taxes for the calendar years 1943 to 1945, inclusive. The deficiency asserted is \$170,891.90, the entire amount of which is in controversy.

IV.

The determination of tax set forth in said notice of deficiency is based on the following errors:

1. The Commissioner of Internal Revenue has erred in including in the determination of the petitioners' income tax net income for the taxable year ended December 31, 1942 the sum of \$40,624.38 as income to the petitioners, rather than as income for the taxable year ended December 31, 1943 to the petitioner, Thomas H. Brodhead, and to the Thomas H. Brodhead Trust as partners in the partnership of T. H. Brodhead Company, a special partnership organized and doing business under the laws of the Territory of Hawaii for the fiscal period October 1, 1942 to February 28, 1943.

2. The Commissioner of Internal Revenue has erred in the determination that the special partnership of T. H. Brodhead Company, formed under Partnership Agreement dated September 30, 1942 with petitioner, Thomas H. Brodhead as a general partner and the Thomas H. Brodhead Trust as a special partner, as well as the partnership of T. H. Brodhead Company as changed on February 28, 1943 by the withdrawal of the Thomas H. Brodhead Trust as a special partner and the admission of the Elizabeth S. Brodhead Trust as a special partner, is not a valid partnership for income tax purposes, and that all income of the original and amended T. H. Brodhead Company for the taxable years 1942 through 1946 is taxable to the petitioners.

3. The Commissioner of Internal Revenue has

erred in allowing in the determination of the petitioners' income tax net income for the taxable year ended December 31, 1942 an additional deduction in the amount of \$13.40 for contributions made by the partnership of T. H. Brodhead Company.

4. The Commissioner of Internal Revenue has erred in determining that the income tax liability for the petitioners is \$85,704.06 for the taxable year ended December 31, 1942.

5. The Commissioner of Internal Revenue has erred in determining that the income from the T. H. Brodhead Company reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust for the taxable year 1943 is eliminated from such fiduciary return and is taxable to the petitioners.

6. The Commissioner of Internal Revenue has erred in including in the determination of the petitioners' income tax net income and victory tax net income for the taxable year ended December 31, 1943 the sum of \$33,449.51, being an allocation of income during the year 1943 of the Elizabeth S. Brodhead Trust from its interest in the T. H. Brodhead Company, a special partnership.

7. The Commissioner of Internal Revenue has erred in disallowing in the determination of petitioners' income tax net income and victory tax net income from the partnership of T. H. Brodhead Company a deduction of \$100.00 for legal fees incurred and paid by the T. H. Brodhead Company during the year ended December 31, 1943.

8. The Commissioner of Internal Revenue has erred in allowing in the determination of the petitioners' income tax net income for the taxable year ended December 31, 1943 an additional deduction in the amount of \$585.64 for contributions made by the partnership of T. H. Brodhead Company.

9. The Commissioner of Internal Revenue has erred in determining that the amount of income and victory tax liability for the petitioners for the year 1943 which is unforgiven in the taxable year ended December 31, 1943 is \$18,301.43.

10. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$42,280.89 or of any part thereof in petitioners' income and victory tax for the taxable year ended December 31, 1943.

11. The Commissioner of Internal Revenue has erred in determining that the income from the T. H. Brodhead Company reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust for the taxable year 1944 is eliminated from such fiduciary return and is taxable to the petitioners.

12. The Commissioner of Internal Revenue has erred in including in the determination of the petitioners' income tax net income for the taxable year ended December 31, 1944 the sum of \$95,106.88, representing income received by the Elizabeth S. Brodhead Trust during the calendar year 1944 from its interest in the T. H. Brodhead Company, a special partnership.

13. The Commissioner of Internal Revenue has erred in allowing in the determination of the petitioners' income tax net income for the taxable year ended December 31, 1944 an additional deduction in the amount of \$4,250.50 for contributions made by the partnership of T. H. Brodhead Company.

14. The Commissioner of Internal Revenue has erred in determining that the income tax liability for the petitioners is \$110,299.10 for the taxable year ended December 31, 1944.

15. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$79,944.90 or of any part thereof in petitioners' income tax for the taxable year ended December 31, 1944.

16. The Commissioner of Internal Revenue has erred in determining that the income from the T. H. Brodhead Company reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust for the taxable year 1945 is eliminated from such fiduciary return and is taxable to the petitioners.

17. The Commissioner of Internal Revenue has erred in including in the determination of petitioners' income tax net income for the taxable year ended December 31, 1945 the sum of \$55,690.75, representing income to the Elizabeth S. Brodhead Trust from its interest in the T. H. Brodhead Company, a special partnership.

18. The Commissioner of Internal Revenue has erred in allowing in the determination of the petitioners' income tax net income for the taxable year

ended December 31, 1945 an additional deduction in the amount of \$1,395.11 for contributions made by the partnership of T. H. Brodhead Company during its fiscal year March 1, 1944 to February 28, 1945 and from March 1, 1945 to February 28, 1946, as allocated to the calendar year 1945.

19. The Commissioner of Internal Revenue has erred in determining that the income tax liability for the petitioners is \$100,198.87 for the taxable year ended December 31, 1945.

20. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$48,666.11 or of any part thereof in petitioners' income tax for the taxable year ended December 31, 1945.

V.

The facts upon which the petitioners rely as the basis for this proceeding are as follows:

1. The statute of limitations bars the Commissioner of Internal Revenue from asserting a deficiency in tax for the year 1943, the tax return for said year having been filed not later than March 15, 1944, and no extension of time for the assessment of said tax having been executed.

2. The petitioner, Thomas H. Brodhead, on September 30, 1942 settled the Thomas H. Brodhead Trust by a transfer to the Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, and to Mortimer J. Glueck, a resident of the Territory of Hawaii, as Trustees,

of the sum of \$40,000.00 under the hereinafter-mentioned terms and conditions.

3. By the terms of the Thomas H. Brodhead Trust Agreement, a fifty percent (50%) interest in the T. H. Brodhead Company, a special partnership organized under the laws of the Territory of Hawaii, was to be purchased by the said Trust, the income from which interest was to be accumulated until the beneficiaries, the children of the petitioners, reached the age of twenty-one years, with discretion in the aforementioned Trustees to pay out of the net income of the Trust amounts necessary for the maintenance, support and education of the beneficiaries.

4. The special partnership of T. H. Brodhead Company was formed under Partnership Agreement dated September 30, 1942 in conformity with the laws of the Territory of Hawaii, and was a bona fide and valid partnership for all purposes.

5. By the terms of the Thomas H. Brodhead Trust, the petitioner, Thomas H. Brodhead, completely divested himself of all right, title or interest in the Trust Estate, both corpus and income, and has vested the same in the Trustees, to wit, the Bishop Trust Company, Limited, and Mortimer J. Glueck who is unrelated by blood or marriage to petitioner, Thomas H. Brodhead.

6. By the terms of the Thomas H. Brodhead Trust, Thomas H. Brodhead has no right or power, discretionary or otherwise, to make any distribution

of income or principal, current or accumulated, in any manner whatsoever, such right of disposition being confined to the terms of the Trust instrument and to be exercised, where permissible under the terms of the Trust, within the sole discretion of the Trustees.

7. By the terms of the Thomas H. Brodhead Trust, Elizabeth S. Brodhead, one of the petitioners herein, had no interest in the Thomas H. Brodhead Trust and had no right or power, discretionary or otherwise, to make any distribution of income or principal, current or accumulated, in any manner whatsoever.

8. The gross income of the Thomas H. Brodhead Trust for the fiscal year ended September 30, 1943 included income from the partnership of T. H. Brodhead company amounting to \$34,319.30, all of which income was returned by said Thomas H. Brodhead Trust for the fiscal year ended September 30, 1943, the income tax being computed thereon, and the tax thereon being properly paid by the Thomas H. Brodhead Trust.

9. On February 28, 1943, petitioner, Thomas H. Brodhead, made a gift to his wife, Elizabeth S. Brodhead, and transferred to her cash in the amount of \$10,000.00, which transfer he disclosed on his gift tax return filed for the year 1943, the gift tax being computed thereon, and the tax thereon being paid by petitioner, Thomas H. Brodhead.

10. The petitioner, Elizabeth S. Brodhead, on February 28, 1943 settled the Elizabeth S. Brod-

head Trust by a transfer to the Bishop Trust Company, Limited, and Mortimer J. Glueck, as Trustees, of the sum of \$10,000.00 under the hereinafter-mentioned terms and conditions.

11. By the terms of the Elizabeth S. Brodhead Trust Agreement, the interest of the Thomas H. Brodhead Trust, as special partner in the partnership of T. H. Brodhead Company, was to be purchased by the said Elizabeth S. Brodhead Trust, the income from which interest was to be accumulated until the beneficiaries, the children of the petitioners, reached the age of twenty-three, at which time the Trust was to be terminated and the corpus and accumulated income to be distributed to the beneficiaries.

12. The T. H. Brodhead Company, in which the Elizabeth S. Brodhead Trust became a special partner, was formed under Partnership Agreement dated September 30, 1942, and amended on February 28, 1943, all in conformity with the laws of the Territory of Hawaii, and was and is a bona fide and valid partnership for all purposes.

13. By the terms of the Elizabeth S. Brodhead Trust, the petitioner, Elizabeth S. Brodhead, completely divested herself of all right, title or interest in the Trust Estate, both corpus and income, the same being at all times held by the Trustees, to wit, the Bishop Trust Company, Limited, and Mortimer J. Glueck who is unrelated by blood or marriage to the petitioner, Elizabeth S. Brodhead.

14. By the terms of the Elizabeth S. Brodhead

Trust, Elizabeth S. Brodhead has no right or power, discretionary or otherwise, to make any distribution of income or principal, current or accumulated, in any manner whatsoever, such right of disposition being confined to the terms of the Trust instrument, and to be exercised, where permissible under the terms of the Trust, within the sole direction of the Trustees.

15. By the terms of the Elizabeth S. Brodhead Trust, Thomas H. Brodhead, one of the petitioners herein, had no interest in the Elizabeth S. Brodhead Trust and had no right or power, discretionary or otherwise, to make any distribution of income or principal, current or accumulated, in any manner whatsoever.

16. The gross income of the Elizabeth S. Brodhead Trust for the taxable year 1944 included income from the partnership of T. H. Brodhead Company amounting to \$40,895.44, all of which income was returned by said Elizabeth S. Brodhead Trust for the year 1944, the income tax being computed thereon and the tax thereon being properly paid by the said Elizabeth S. Brodhead Trust.

17. The gross income of the Elizabeth S. Brodhead Trust for the taxable year 1945 included income from the partnership of the T. H. Brodhead Company amounting to \$67,914.53, all of which income was returned by said Elizabeth S. Brodhead Trust, the income tax on said income being properly paid by the said Elizabeth S. Brodhead Trust.

18. The additional contributions which the Commissioner of Internal Revenue has erred in allow-

ing as deductions to the petitioners were contributions which were, in fact, made by and were allowable to the partnership of T. H. Brodhead Company in the years 1942 through 1945.

19. During the fiscal period October 1, 1942 to February 28, 1943, legal services were rendered to the partnership of T. H. Brodhead Company in connection with the drafting of the special partnership agreement of that company, the bill for which services was rendered and paid by the partnership of T. H. Brodhead Company during the said fiscal period and was properly claimed as a deduction in the determination of the ordinary income of the partnership for the said period as an ordinary and necessary business expense. The Commissioner of Internal Revenue has erred in disallowing this contribution.

Wherefore, the petitioners pray that this Court may hear the proceeding and determine that there is no deficiency due from the petitioners for the years 1943, 1944 and 1945.

/s/ THOMAS H. BRODHEAD,
/s/ ELIZABETH S. BRODHEAD

Territory of Hawaii,
City and County of Honolulu—ss.

Thomas H. Brodhead and Elizabeth S. Brodhead, being duly sworn, say that they are the petitioners above-named; that they have read the foregoing petition, or had the same read to them, and are familiar with the statements contained therein, and

that the statements contained therein are true, except those stated to be upon information and belief, and that those they believe to be true.

/s/ THOMAS H. BRODHEAD

/s/ ELIZABETH S. BRODHEAD

Subscribed and sworn to before me this 30th day of June, 1950.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires 6-30-53.

EXHIBIT A

Form 1230

SN-IT-1

IT:FC:LMJ-150D

Feb. 7, 1950

Mr. Thomas H. Brodhead and Mrs. Elizabeth S. Brodhead, Husband and Wife,
843 Kaahumanu Street, Honolulu, T. H.

Dear Sir and Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1943, December 31, 1944, and December 31, 1945, discloses a deficiency of \$170,891.90 as shown in the attached statement.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 150 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 150th day) from the date of the mailing of this

letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D.C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, P.O. Box 421, Honolulu 9, T. H., for the attention of IT:FC:LMJ. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner

/s/ By H. A. PETERSON,
Internal Revenue Agent in Charge

Enclosures: Statement, Form 1276, Form of waiver.

STATEMENT

Year	Deficiency
1943	\$42,280.89
1944	79,944.90
1945	48,666.11
	<hr/>
Total.....	\$170,891.90

In making this determination of your income tax

liability, careful consideration has been given to the reports of examination dated December 29, 1947 and September 22, 1948, to your protests dated April 23, 1948 and November 26, 1948, and to statements made at a conference held on June 27, 1949.

A copy of this letter and statement has been mailed to your representatives, Cameron & Johnstone, P.O. Box 2906, Honolulu 2, T. H., in accordance with the authority contained in the power of attorney executed by you.

TAXABLE YEAR ENDED DECEMBER 31, 1942

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....	\$ 85,260.02
Unallowable deductions and additional income:	
(a) Business income increased	40,624.38
	<hr/>
Total	\$125,884.40
Nontaxable income and additional deductions:	
(b) Contributions increased	13.40
	<hr/>
Net income adjusted	\$125,871.00

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that the T. H. Brodhead Company, an alleged partnership, is not a valid partnership for Federal income tax purposes and that all income from the T. H. Brodhead Company is taxable to you. In view of this determination, the income from the T. H. Brodhead Company, which you reported on a fiscal year basis in line with the fiscal year basis used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns. Accordingly, a portion of the income reported by the alleged partnership, T. H. Brodhead Company, for the period October 1, 1942 to February 28, 1943, is allocated to the calendar year 1942 based on the number of days it was in existence in the year 1942. The computation of your revised business income from the alleged partnership, T. H. Brodhead Company, is as follows:

Ordinary net income reported on partnership return for the period 10-1-42 to 2-28-43		\$ 79,741.63
Add: Gross income taxes overstated.....	\$ 1,913.97	
Partnership filing fee erroneously charged to expense	1.00	1,914.97
	<hr/>	<hr/>
Total		\$ 81,656.60
Less: Excessive profits on contract sales to U. S. Government per renegotiation settlement	\$ 12,000.00	
Additional gross income taxes not accrued on books	4,853.06	16,853.06
	<hr/>	<hr/>
Ordinary net income for period 10-1-42 to 2-28-43 revised		\$ 64,803.54
Pro-rata portion of \$64,803.54 applicable to calendar year ending 12-31-43 (1-1-43 to 2-28-43) : 59/151 of \$64,803.54.....		25,320.59
		<hr/>
Pro-rata portion of \$64,803.54 applicable to calendar year ending 12-31-42 (10-1-42 to 12-31-42) : 92/151 of \$64,803.54, representing your revised business income from the alleged partnership, T. H. Brodhead Company, for the year 1942, not reported on your 1942 individual income tax return.....		\$ 39,482.95
Add: Additional adjustments not applicable to the business income of the alleged partnership, T. H. Brodhead Company, as revised above:		
Territorial income taxes overstated.....		924.21
Gross income taxes overstated.....		217.22
		<hr/>
Business income increased for the calendar year 1942		\$ 40,624.38

(b) Contributions of \$22.00 were reported on the partnership return of the alleged partnership, T. H. Brodhead Company, for the period 10-1-42 to 2-28-43, of which 92/151, or \$13.40, are allocable to the calendar year 1942.

COMPUTATION OF TAX

Net income adjusted		\$125,871.00
Less: Personal exemption	\$ 1,200.00	
Credit for dependents	379.17	1,579.17
	<hr/>	<hr/>
Balance (surtax net income)		\$124,291.83
Less: Earned income credit—maximum....		1,400.00
		<hr/>
Balance subject to normal tax.....		\$122,891.83
		<hr/>
Normal tax at 6% on \$122,891.83.....	\$ 7,373.51	
Surtax on \$124,291.83		78,330.55
		<hr/>
Income tax liability		\$ 85,704.06

TAXABLE YEAR ENDED DECEMBER 31, 1943

ADJUSTMENTS TO NET INCOME

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$ 73,699.69	\$ 74,888.57
Unallowable deductions and additional income		
(a) Business income increased	33,449.51	33,449.51
	<hr/>	<hr/>
Total	\$107,149.20	\$108,338.08
Nontaxable income and additional deductions:		
(b) Contributions increased	585.64	none
	<hr/>	<hr/>
Net income adjusted	\$106,563.56	\$108,338.08

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that the T. H. Brodhead Company, an alleged partnership between Thomas H. Brodhead and the Elizabeth S. Brodhead Trust, is not a valid partnership for Federal income tax purposes, and that all income from the T. H. Brodhead Company is taxable to you, with the result that the income from the T. H. Brodhead Company reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust is eliminated from such fiduciary return. In view of this determination, the income from the T. H. Brodhead Company,

which you reported on a fiscal year basis in line with the fiscal year basis used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns. Accordingly, a portion of the income reported by the alleged partnership, T. H. Brodhead Company, for the period October 1, 1942 to February 28, 1943, and a portion of the income reported by the alleged partnership, T. H. Brodhead Company, for the fiscal year 3-1-43 to 2-29-44, is allocated to the calendar year 1943, based on the respective number of days in 1943. The computation of your revised business income from the alleged partnership, T. H. Brodhead Company, is as follows:

Ordinary net income reported on partnership return for the fiscal year 3-1-43 to 2-29-44		\$ 96,790.88
Add: Legal fees drafting deed of trust erroneously charged to expense.....\$	100.00	
Gross income taxes overstated	2,404.55	2,504.55
	<hr/>	<hr/>
Ordinary net income for fiscal year 3-1-43 to 2-29-44 revised		\$ 99,295.43
Pro-rata portion of \$99,295.43 applicable to calendar year ending 12-31-44 (1-1-44 to 2-29-44): 60/366 of \$99,295.43		16,277.94
		<hr/>
Pro-rata portion of \$99,295.43 applicable to calendar year ending 12-31-43 (3-1-43 to 12-31-43): 306/366 of \$99,295.43		\$ 83,017.49
Add: Pro-rata portion of \$64,803.54, representing revised net income for period 10-1-42 to 2-28-43, applicable to calendar year ending 12-31-43 (1-1-43 to 2-28-43): 59/151 of \$64,803.54		25,320.59
		<hr/>
Revised business income from T. H. Brodhead Company for 1943		\$108,338.08
Less: Business income reported on your 1943 return		74,888.57
		<hr/>
Business income increased for the calendar year 1943		\$ 33,449.51

(b) Contributions were reported on the partnership returns of the alleged partnership, T. H. Brodhead Company, in the amount of \$22.00 for the period 10-1-42 to 2-28-43, and in the amount of \$716.50 for the fiscal year 3-1-43 to 2-29-44, which are allocable to the calendar year 1943 on a prorated basis as follows:

59/155 of \$22.00	\$	8.60
306/366 of \$716.50		599.04
		<hr/>
Total allowable	\$	607.64
Reported from above sources on your return		22.00
		<hr/>
Contributions increased	\$	585.64

COMPUTATION OF INCOME AND VICTORY TAX

Income tax net income adjusted.....		\$106,563.56
Less: Personal exemption	\$	1,200.00
Credit for dependents		700.00
		<hr/>
Surtax net income		\$104,663.56
Less: Earned income credit—maximum.....		1,400.00
		<hr/>
Balance subject to normal tax.....		\$103,263.56
		<hr/>
Normal tax at 6% on \$103,263.56.....	\$	6,195.81
Surtax on \$104,663.56		62,824.21
		<hr/>
Total income tax	\$	69,020.02
Victory tax net income adjusted	\$108,338.08	
Less: Specific exemption		624.00
		<hr/>
Income subject to victory tax	\$107,714.08	
		<hr/>
Victory tax before credit (5% of \$107,- 714.08)	\$	5,385.70
Less: Victory tax credit—maximum.....		1,200.00
		<hr/>
Net victory tax		4,185.70
		<hr/>
Net income and victory tax (1).....	\$	73,205.72
		<hr/>
Income tax for 1942 (2)	\$	85,704.06
		<hr/>

Amount of item (1) or (2) whichever is larger		\$ 85,704.06
Forgiveness feature:		
(a) Amount of item (1) or (2) whichever is smaller	\$ 73,205.72	
(b) Amount forgiven—75% of \$73,205.72	54,904.29	
	<hr/>	
(c) Amount unforgiven		18,301.43
		<hr/>
Correct income and victory tax liability.....		\$104,005.49
Income and victory tax liability disclosed by return, Account No. 901221.....	\$ 62,830.74	
Add: Deficiency assessed List Aug 3-513305-45	1,305.86	
	<hr/>	
	\$ 64,136.60	
Less: Credit section 3806(b) I.R.C.—1945	2,412.00	61,724.60
	<hr/>	
Deficiency in income tax		\$ 42,280.89

TAXABLE YEAR ENDED DECEMBER 31, 1944

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....		\$ 54,550.25
Unallowable deductions and additional income:		
(a) Business income increased		95,106.88
		<hr/>
Total		\$149,657.13
Brought forward		\$149,657.13
Nontaxable income and additional deductions:		
(b) Contributions increased		4,250.50
		<hr/>
Net income adjusted		\$145,406.63

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that the T. H. Brodhead Company, an alleged partnership between Thomas H. Brodhead and the Elizabeth S. Brodhead Trust, is not a valid partnership for Federal income tax

purposes, and that all income from the T. H. Brodhead Company is taxable to you, with the result that the income from the T. H. Brodhead Company reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust is eliminated from such fiduciary return. In view of this determination, the income from the T. H. Brodhead Company, which you reported on a fiscal year basis in line with the fiscal year basis used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns. Accordingly, a portion of the income reported by the alleged partnership, T. H. Brodhead Company, for the fiscal year 3-1-43 to 2-29-44, and a portion of the income reported by the alleged partnership, T. H. Brodhead Company, for the fiscal year 3-1-44 to 2-28-45, is allocated to the calendar year 1944, based on the respective number of days in 1944. The computation of your revised business income from the alleged partnership, T. H. Brodhead Company, is as follows:

Ordinary net income reported on partnership return for the fiscal year 3-1-44 to 2-28-45	\$153,829.06
Add: Gross income taxes overstated.....	6,871.59
	<hr/>
Ordinary net income for fiscal year 3-1-44 to 2-28-45 revised	\$160,700.65
Pro-rata portion of \$160,700.65 applicable to calendar year ending 12-31-45 (1-1-45 to 2-28-45) : 59/365 of \$160,700.65.....	25,976.27
	<hr/>
Pro-rata portion of \$160,700.65 applicable to calendar year ending 12-31-44 (3-1-44 to 12-31-44) : 306/365 of \$160,700.65....	\$134,724.38
Add: Pro-rata portion of \$99,295.43, representing revised net income for fiscal year 3-1-43 to 2-29-44, applicable to calendar year ending 12-31-44 (1-1-44 to 2-29-44) : 60/366 of \$99,295.43	16,277.94
	<hr/>
Revised business income from T. H. Brodhead Company for 1944	\$151,002.32
Less: Business income reported on your 1944 return	55,895.44
	<hr/>
Business income increased for the calendar year 1944	\$ 95,106.88

(b) Contributions were reported on the partnership returns of the alleged partnership, T. H. Brodhead Company, in the amount of \$716.50 for the fiscal year 3-1-43 to 2-29-44, and in the amount of \$5,423.50 for the fiscal year 3-1-44 to 2-28-45, which are allocable to the calendar year 1944 on a prorated basis as follows:

60/366 of \$716.50	\$ 117.46
306/365 of \$5,423.50	4,546.82
	<hr/>
Total allowable	\$ 4,664.28
Reported from above sources on your return	413.78
	<hr/>
Contributions increased	\$ 4,250.50

COMPUTATION OF TAX

Net income adjusted	\$145,406.63	
Less: Surtax exemptions	2,000.00	
	<hr/>	
Surtax net income	\$143,406.63	
Surtax on \$143,406.63		\$105,951.90
Net income adjusted	\$145,406.63	
Less: Normal tax exemption.....	500.00	
	<hr/>	
Balance subject to normal tax.....	\$144,906.63	
Normal tax at 3% on \$144,906.63.....		4,347.20
		<hr/>
Correct income tax liability.....		\$110,299.10
Income tax liability disclosed by return, Account No. 300431		30,354.20
		<hr/>
Deficiency in income tax		\$ 79,944.90

TAXABLE YEAR ENDED DECEMBER 31, 1945

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....	\$ 81,134.23
Unallowable deductions and additional in- come:	
(a) Business income increased	55,690.75
	<hr/>
Total	\$136,824.98

Nontaxable income and additional deductions:

(b) Contributions increased	\$ 1,395.11	
(c) Net capital loss	501.75	1,896.86
	<hr/>	<hr/>
Net income adjusted		\$134,928.12

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that the T. H. Brodhead Company, an alleged partnership between Thomas H. Brodhead and the Elizabeth S. Brodhead Trust, is not a valid partnership for Federal income tax purposes, and that all income from the T. H. Brodhead Company is taxable to you, with the result that the income from the T. H. Brodhead Company reported on a fiduciary return filed for the Elizabeth S. Brodhead Trust is eliminated from such fiduciary return. In view of this determination, the income from the T. H. Brodhead Company, which you reported on a fiscal year basis in line with the fiscal year basis used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns. Accordingly, a portion of the income reported by the alleged partnership, T. H. Brodhead Company, for the fiscal year 3-1-44 to 2-28-45, and a portion of the income reported by the alleged partnership, T. H. Brodhead Company, for the fiscal year 3-1-45 to 2-28-46, is allocated to the calendar year 1945, based on the respective number of days in 1945. The computation of your revised business income from the alleged partnership, T. H. Brodhead Company, is as follows:

Ordinary net income reported on partnership return for the fiscal year 3-1-45 to 2-28-46	\$137,926.84
Less: Additional gross income taxes.....	3.35
	<hr/>
Ordinary net income for fiscal year 3-1-45 to 2-28-46 revised	\$137,923.49
Brought forward	\$137,923.49
Pro-rata portion of \$137,923.49 applicable to calendar year ending 12-31-46 (1-1-46 to 2-28-46) : 59/365 of \$137,923.49.....	22,294.48
	<hr/>
Pro-rata portion of \$137,923.49 applicable to calendar year ending 12-31-45 (3-1-45 to 12-31-45) : 306/365 of \$137,923.49....	\$115,629.01

Add Pro-rata portion of \$160,700.65, representing revised net income for fiscal year 3-1-44 to 2-28-45, applicable to calendar year ending 12-31-45 (1-1-45 to 2-28-45) : 59/365 of \$160,700.65.....	25,976.27
Revised business income from T. H. Brodhead Company for 1945	\$141,605.28
Less: Business income reported on your 1945 return	85,914.53
Business income increased for the calendar year 1945	\$ 55,690.75

(b) Contributions were reported on the partnership returns of the alleged partnership, T. H. Brodhead Company, in the amount of \$5,423.50 for the fiscal year 3-1-44 to 2-28-45, and in the amount of \$4,231.44 for the fiscal year 3-1-45 to 2-28-46, which are allocable to the calendar year 1945 on a prorated basis as follows:

59/365 of \$5,423.50	\$ 876.68
306/365 of \$4,231.44	3,547.45
Total allowable	\$ 4,424.13
Reported from above sources on your return	3,029.02
Contributions increased	\$ 1,395.11

(c) Loss on sale of 50 shares Crandall-McKenzie & Henderson, Inc., previously unreported:

Cost 12-14-28	\$1,300.00
Selling price 7-21-45....	296.50

Long-term capital loss..\$1,003.50

50% of \$1,003.50 to be taken into account and allowable as a deduction

\$ 501.75

COMPUTATION OF TAX

Net income adjusted	\$134,928.12	
Less: Surtax exemptions	2,500.00	
	<hr/>	
Surtax net income	\$132,428.12	
Surtax on \$132,428.12		\$ 96,181.03
Net income adjusted	\$134,928.12	
Less: Normal tax exemptions.....	1,000.00	
	<hr/>	
Balance subject to normal tax	\$133,928.12	
Normal tax at 3% on \$133,928.12.....		4,017.84
		<hr/>
Correct income tax liability		\$100,198.87
Income tax liability disclosed by return, Account No. 300312		51,532.76
		<hr/>
Deficiency in income tax		\$ 48,666.11

[Endorsed]: T.C.U.S. Filed July 3, 1950.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioners admits and denies as follows:

I, II and III. Admits the allegations contained in paragraphs I, II and III of the petition.

IV and IV-1 to 20, inclusive. Denies that the Commissioner erred in the determination of the deficiencies as alleged in paragraph IV of the petition and subparagraphs 1 to 20, inclusive, thereunder.

V-1. Denies the allegations contained in subpara-

graph 1 of the petition except it is admitted that an extension of time for the assessment of said tax was executed extending the time for assessment to June 30, 1950.

2 to 19, inclusive. Denies the allegations contained in subparagraphs 2 to 19, inclusive, of paragraph V of the petition.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal
Revenue.

Of Counsel:

B. H. NEBLETT, Division Counsel;
T. M. MATHER, Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Aug. 8, 1950.

[Title of Tax Court and Cause.]

AMENDMENT TO ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and, pursuant to leave first had and obtained, amends the answer in the above-entitled proceeding by inserting immediately following paragraph V of the answer the following paragraph:

VI. Further answering, respondent alleges:

1. That on or about March 20, 1944, the petitioners filed with the Collector of Internal Revenue

for the collection district of Hawaii a Federal income tax return, Form 1040, for the calendar year 1943;

2. That the gross income stated on said return was in the amount of \$74,888.57;

3. That petitioners omitted from gross income on said return an amount properly includable therein which is in excess of twenty-five per centum of the amount of gross income stated in said return, and by reason thereof the provisions of Section 275(c) of the Internal Revenue Code are applicable to the tax for said year.

4. That on or about January 18, 1949, the petitioners and the Commissioner of Internal Revenue executed a consent extending to June 30, 1950, the period within which an income tax may be assessed or a deficiency notice mailed to the petitioners for the calendar year 1943.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

C. W. NYQUIST,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: T. C. U. S. Filed June 20, 1951.

The Tax Court of the United States

Docket No. 29391

THOMAS H. BRODHEAD and
ELIZABETH S. BRODHEAD,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 29392

THOMAS H. BROADHEAD and
ELIZABETH S. BRODHEAD,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION OF FACTS

It is hereby stipulated and agreed, by and between the parties hereto, by their respective attorneys, that the following facts shall be taken as true and may be received by the Court in evidence with the same force and effect as if the facts herein contained were testified to by competent witnesses; provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other or further evidence not inconsistent with the facts herein stipulated as true:

I.

That petitioners Thomas H. Brodhead and Elizabeth S. Brodhead are, and were at all times material to this proceeding, husband and wife and residents of the Territory of Hawaii.

II.

That petitioners have three children, Virginia Holmes Brodhead, born December 29, 1939, Barbara Jane Brodhead, born November 19, 1942, and Thomasene Elizabeth Brodhead, born May 1, 1945.

III.

That petitioner Thomas H. Brodhead, on September 30, 1942, created the Thomas H. Brodhead Trust, naming Mortimer J. Glueck and Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, as Trustees. A true copy of Trust Indenture, dated the 30th day of September, 1942, marked Exhibit 1, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

IV.

That a document entitled a Special Partnership Agreement, dated as of the 30th day of September, 1942, was duly executed by Thomas Holmes Brodhead, described as General Partner therein, and Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated September 30, 1942, made by Thomas Holmes Brodhead, described as Special Partner therein. A true copy of said Special Partnership Agreement,

marked Exhibit 2, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

V.

That a Bill of Sale, dated as of the close of business on September 30, 1942, was duly executed by Thomas Holmes Brodhead, as Seller, and T. H. Brodhead Company, a Special Partnership, as Buyer. A true copy of said Bill of Sale, marked Exhibit 3, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

VI.

That on December 23, 1942, a duly executed Certificate of Special Partnership and Affidavits of Thomas Holmes Brodhead, Mortimer J. Glueck, and W. A. White, required by Section 6875, Revised Laws of Hawaii 1935, were duly filed in the Office of the Treasurer of the Territory of Hawaii in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935. A true copy of said Certificate and Affidavits, marked Exhibit 4, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

VII.

That a Statement of Substance of Certificate of Special Partnership was duly published in The Honolulu Advertiser on December 30 and 31, 1942, and January 6 and 7, 1943.

VIII.

The Elizabeth S. Brodhead Trust, with said Mor-

timer J. Glueck and Bishop Trust Company, Limited, named as Trustees, was created on February 28, 1943. A true copy of Trust Indenture dated the 28th day of February, 1943, marked Exhibit 5, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

IX.

That on February 28, 1943, the Elizabeth S. Brodhead Trust purchased from the Thomas H. Brodhead Trust all of its right, title and interest in and to its 50% capital interest in the Special Partnership known as "T. H. Brodhead Co.", which was duly assigned to said Elizabeth S. Brodhead Trust by Assignment dated the 28th day of February, 1943. A true copy of said Assignment, marked Exhibit 6, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

X.

That the Elizabeth S. Brodhead Trust gave to the Thomas H. Brodhead Trust its note for the unpaid balance of the purchase price of its interest in T. H. Brodhead Co. in the amount of \$30,000.00 with interest at 5% per annum. Interest was paid periodically, and said note was paid off by payments of \$5,000.00 on June 9, 1945, of \$5,000.00 on November 26, 1945, of \$17,500.00 on June 22, 1949, and the balance of \$2,500.00 on September 9, 1949.

XI.

That on May 5, 1943, a duly executed Certificate of Change of Special Partnership and Affidavits of

Thomas Holmes Brodhead, Mortimer J. Glueck, and W. A. White, required by Section 6875, Revised Laws of Hawaii 1935, were duly filed in the Office of the Treasurer of the Territory of Hawaii in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935. A true copy of said Certificate and Affidavits, marked Exhibit 7, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

XII.

That a Statement of the Substance of Certificate of Change of Special Partnership was duly published in The Honolulu Advertiser on May 12, 13, 19 and 20, 1943.

XIII.

That a document entitled Amendment of Special Partnership Agreement, changing the name of said special partnership from "T. H. Brodhead Co." to "Ace Distributors", dated as of the close of business of the 28th day of February, 1947, was duly executed by Thomas Holmes Brodhead, described as General Partner therein, and Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead, as Settlor, described as Special Partner therein. A true copy of said Amendment, marked Exhibit 8, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

XIV.

That on February 28, 1947, a Certificate of Change of Special Partnership was duly filed in the Office

of the Treasurer of the Territory of Hawaii in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935. A true copy of said Certificate, marked Exhibit 9, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

XV.

That a Statement of the Substance of Certificate of Change of Special Partnership was duly published in The Honolulu Advertiser on March 7, 8, 14 and 15, 1947.

XVI.

That as of the close of business on February 28, 1947, Ace Distributors (formerly T. H. Brodhead Co.) duly assigned to T. H. Brodhead Co., Ltd., a Hawaiian corporation, certain rights, property, assets and privileges, subject to certain liabilities, obligations, and indebtedness, having a net book value of \$80,000.00, in full payment of 4,000 shares of stock of said corporation to be issued to each of Thomas Holmes Brodhead and Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead, as Settlor; that on February 28, 1947, there was filed in the Office of the Treasurer of the Territory of Hawaii, in the matter of the incorporation of T. H. Brodhead Co., Ltd., an Affidavit of Officers, setting forth the subscribers to the capital stock of the corporation and the manner in which payment for the stock had been made, to which is attached the Bill of Sale

of Ace Distributors to T. H. Brodhead Co., Ltd., referred to above. A true copy of said Affidavit of Officers and Bill of Sale attached, marked Exhibit 10, is attached hereto, incorporated herein by reference, and made part hereof for all purposes.

XVII.

That T. H. Brodhead Co. filed its partnership tax returns on an accrual and fiscal year basis ending on the 28th day of February, and filed its first return on that basis for the fiscal year ended February 28, 1943. Photostatic copies of the partnership returns for the fiscal years ended February 28, 1943, February 28, 1944, February 28, 1945, February 28, 1946, February 28, 1947, February 28, 1948, and February 28, 1949, marked Exhibits 11, 12, 13, 14, 15, 16 and 17, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

XVIII.

That Schedules showing the income and expenses for the period from September, 1942, to September 30, 1950, and the inventory of assets of the Thomas H. Brodhead Trust at September 30, 1950, as shown by the books and records of said Trust, marked Exhibits 18 and 19, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

XIX.

That Schedules showing the income and expenses for the period from February 28, 1943, to February 28, 1951, the payments received as distributions of

its share of income of T. H. Brodhead Co. and/or Ace Distributors, and the inventory of assets of the Elizabeth S. Brodhead Trust at February 28, 1951, as shown by the books and records of said Trust, marked Exhibits 20, 21 and 22, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

XX.

That the Thomas H. Brodhead Trust and Elizabeth S. Brodhead Trust filed federal fiduciary returns each year and duly paid the tax shown to be due thereon. Schedules showing the items of income and deductions shown on said tax returns of Thomas H. Brodhead Trust and Elizabeth S. Brodhead Trust, marked Exhibits 23 and 24, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes. Photostatic copies of the fiduciary tax returns filed by said Thomas H. Brodhead Trust for the years 1943, 1944, 1945, 1946, 1947, 1948 and 1949, marked Exhibits 25, 26, 27, 28, 29, 30 and 31, respectively, and by said Elizabeth S. Brodhead Trust for the same years, marked Exhibits 32, 33, 34, 35, 36, 37 and 38, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

XXI.

That photostatic copies of the joint tax returns filed by petitioners for the years 1942, 1943, 1944, 1945 and 1948, of petitioner Thomas H. Brodhead for the year 1946, and of petitioner Elizabeth S.

Brodhead for the year 1946, marked Exhibits 39, 40, 41, 42, 43, 44 and 45, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

/s/ MILTON CADES,

Counsel for Petitioners,

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal
Revenue, Counsel for Respondent.

EXHIBIT No. 1

(Deed of Trust dated September 30, 1942
Thomas Holmes Brodhead)

This indenture, made this 30th day of September, 1942, by and between Thomas Holmes Brodhead, who is a citizen of the United States of America, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Settlor," and Mortimer J. Glueck, of Honolulu aforesaid, who is a citizen of the United States of America, and Bishop Trust Company, Limited, a corporation duly organized and existing under the laws of the Territory of Hawaii and a majority of whose officers and directors are citizens of the United States of America, hereinafter called the "Trustees,"

Witnesseth that:

The Settlor, in consideration of the love and affection he bears the beneficiaries and of the acceptance by the Trustees of the trust herein created,

Exhibit No. 1—(Continued)

does hereby transfer, set over and deliver to the Trustees, their successors in trust and assigns, the sum of Forty Thousand and No/100ths Dollars (\$40,000.00);

To have and to hold the same, together with all other property which may hereafter be or become a part of the trust estate hereby created, unto the Trustees, their successors in trust and assigns, in trust nevertheless for the uses and purposes hereinafter stated, that is to say:

(a) The Trustees shall contribute the sum of Forty Thousand and No/100ths Dollars (\$40,000.00) to the capital of the partnership known as "T. H. Brodhead Co.," a special partnership to be duly organized concurrently herewith under that certain Special Partnership Agreement dated September 30, 1942, for a fifty per cent (50%) interest therein, and continue to be a special partner in such partnership, said sum being the fair and reasonable value of said interest duly ascertained as of September 30, 1942;

(b) The Trustees shall accumulate all net income from the said trust estate during the continuation of this trust; provided, however, that the Trustees during such time may in their sole discretion pay out of the net income of said trust estate to or apply for the use and benefit of any of the children of the Settlor or the lawful issue of any of them who shall die during the continuance of this trust, such amounts as may be necessary for their maintenance, support and education; and all in-

Exhibit No. 1—(Continued)

come not so distributed in any calendar year shall at the end of such year be added to and become a part of the corpus of the trust estate;

(c) The Trustees are hereby authorized and empowered to pay from the corpus of the said trust estate any sum or sums from time to time and for such periods of time as in their sole discretion they shall deem necessary or proper for the support, maintenance and education of any of the children of the Settlor whenever the Trustees in their sole discretion deem the income which any of them are receiving insufficient for such purposes; and such payment shall not be deemed an advancement of corpus to any child and the Trustees shall be under no obligation in such use of corpus to pay or use corpus equally or proportionately for said child and all payments from the corpus of the trust estate shall be binding upon all beneficiaries hereunder;

(d) The Trustees are hereby authorized and empowered to pay to any child of the Settlor at any time after said child shall attain the age of twenty-one (21) years, as the Trustees in their sole discretion shall deem proper, such portion of the corpus of the trust estate and the accumulated income thereof as shall constitute one share thereof, such share to be determined by considering the trust estate as being divided into as many equal shares as there shall be children of the Settlor then surviving or lineal descendants of any deceased child, one share for each living child and one share for the lineal descendants of each deceased child;

Exhibit No. 1—(Continued)

(e) This trust shall cease and determine twenty (20) years after the date of the death of the Settlor, and the Trustees shall thereupon transfer, set over and deliver all the property then comprising the trust estate and all accumulated income thereof to the children of the Settlor (other than those to whom distribution of a share of the trust estate may have been made in accordance with the provisions of subparagraph (d) hereinabove), and the lawful issue of any of the children of the Settlor who shall have died prior to the termination of the said trust estate, in equal shares, per stirpes and not per capita, absolutely and free and clear of any trust, and in the event that upon the death of the last survivor of the children of the Settlor there be no lawful issue of said children then surviving, then the said property and income shall at such time vest in and be transferred, conveyed and delivered by the Trustees, absolutely and in fee simple to those persons other than the Settlor who would be the heirs at law of the last survivor of the children of the Settlor under the statutes of descent of the Territory of Hawaii in full force and effect at the time of his or her death, the same as if he or she had died intestate at that time; provided, however, that in the event the partnership known as "T. H. Brodhead Co." shall terminate during the continuance of this trust, the Trustees may determine this trust at any time thereafter which to the Trustees may seem best, and thereupon the property comprising the said trust estate, together with

Exhibit No. 1—(Continued)

the accumulated income thereof, shall vest in and be transferred, conveyed and delivered by the Trustees absolutely and in fee simple, free and clear from any trusts in equal shares to those who are surviving of the children of the Settlor (other than those to whom distribution of a share of this trust estate may have been made in accordance with the provisions of subparagraph (d) hereinabove), and the lawful issue of any of said children who shall then be dead, said issue to take per stirpes and not per capita;

(f) The Trustees shall receive, hold, manage and control the said trust estate, collect the income therefrom and pay all charges incident to trust estates and properly payable by said trust estate therefrom; and the Settlor authorizes the Trustees to retain either permanently or temporarily or for such period of time as they may deem expedient any property conveyed, assigned or delivered to the Trustees by the Settlor of whatever nature; and the Settlor directs that the said Trustees shall not be held liable for any loss resulting to said trust estate by reason of the Trustees' retaining any such property or for any error of judgment in this respect;

(g) The Settlor authorizes and empowers the Trustees to sell at public or private sale, convert, transfer, exchange, mortgage, hypothecate and otherwise deal in or dispose of the whole or any part of the property, real, personal and mixed, which may be from time to time a part of the trust

Exhibit No. 1—(Continued)

estate, with power to accept any purchase money mortgage or mortgages for any part of the purchase or exchange price; to invest and reinvest the whole or any part of the assets of the said trust estate, and in investing and reinvesting any assets of said trust estate the Trustees may invest in common or preferred stocks of corporations, bonds, notes, debentures, participation or investment certificates and/or in any other property, real or personal, in so far as in their judgment they shall deem such investments advisable, it being the intention of the Settlor, under the foregoing provisions, to grant to the Trustees full power to invest and reinvest money in such investments as they shall deem desirable and suitable investments for trust funds without being restricted to the classes of investments which trustees are permitted by law to make, provided, however, that the Trustees shall obtain the consent of the Settlor to make such investments during his lifetime, and provided further that in the event the Settlor shall die before the termination hereof, the Trustees shall thereafter be restricted in the making of investments of trust funds to the classes of investments which trustees are permitted by law to make, except that in any event the Trustees may, without liability for any losses resulting therefrom, make advances or loans to the partnership known as "T. H. Brodhead Co." the Settlor authorizes and empowers the Trustees, upon any increase of the capital stock of any corporation in which said trust estate shall own shares,

Exhibit No. 1—(Continued)

to exercise any preemptive rights to such shares to which said trust estate may be liable and/or to subscribe for such additional shares as in the judgment of the Trustees shall be an advisable investment; and for this purpose and for other purposes of this trust, the Settlor authorizes and empowers the Trustees to borrow money either from themselves or from others and upon such terms and conditions as they may deem appropriate; the Trustees shall have the right and power to vote either directly or by proxy the stock of any corporation that may be a part of said trust estate from time to time at all meetings of stockholders as the Trustees may deem best;

(h) Stock dividends shall be treated as capital of the trust estate and all stock acquired by the Trustees under the exercise of rights to subscribe or the net proceeds realized by the Trustees from the sale of rights to subscribe shall be treated as capital of the trust estate and all other corporate distribution shall be treated as income; provided, however, that where a distribution is made through the reduction of any corporate stock held by the Trustees, or, in the exclusive discretion of the Trustees it appears to be made in or as a result of a partial or complete liquidation or dissolution of the corporation, the Trustees may in their discretion make such apportionment of any such distribution between income and capital as to them may seem just; the Trustees shall have full power and authority to decide and determine in all doubtful

Exhibit No. 1—(Continued)

cases what property or moneys received by them is capital and what is income; and also in all doubtful cases to decide and determine what expenses and other charges are payable out of income and what out of capital; and also in all doubtful cases to decide and determine what proportion of payments for expenses of or charges against the trust estate are payable from income and what from capital; and all beneficiaries shall be bound by the decision and determination of the Trustees in regard to all such allocations between capital and income; the Trustees shall have authority in and discretion to prorate during the year and withhold from the income received by the trust estate an amount sufficient to pay proportionate shares of the expenses payable by the trust estate so that said payments of net income may be more regular and even in amount, and to withhold such amounts of income and/or principal as they may deem necessary to protect themselves from any possible liability for taxes and/or costs or expenses in connection with or arising out of possible claims therefor;

(i) The Settlor may transfer, convey and assign to the Trustees any property in addition to that hereinbefore referred to, to be held upon the trust hereby created, and thereafter such additional property shall be and form a part of the trust estate;

(j) The Trustees shall render annual statements of account to the persons who are the beneficiaries of this trust, as hereinabove provided, but the Trustees shall not be required to account in any court

Exhibit No. 1—(Continued)

unless requested so to do by a beneficiary; provided, however, that the Trustees may whenever they shall deem it advisable file accounts in any court having jurisdiction thereof for approval, the costs of said proceeding to be paid out of the trust estate;

(k) If any person entitled to receive any of the income and/or capital of the trust estate shall be a minor, the Trustees may pay the share of income and/or capital to which said minor is entitled to either parent of or to the natural or legally appointed guardian of such minor, and the receipt of such parent or natural or legally appointed guardian shall be a complete release, discharge and acquittance of the Trustees to account further for any payment or payments so made, and if any beneficiary is a minor, the statements of account may be furnished to either parent of or to the natural or legally appointed guardian of such minor beneficiary;

(l) Bishop Trust Company, Limited, the corporate Trustee, hereunder, shall have the custody and safekeeping of all moneys and securities belonging to the trust estate which are received or collected by the Trustees. Neither Trustee hereunder shall be answerable or accountable for any act of the other Trustee in which he or it shall not participate, nor for the custody of any property except as shall come to his or its own possession or personal control, nor for any loss or damage resulting from any error of judgment or otherwise except through his or its own gross neglect or wilful

Exhibit No. 1—(Continued)

default. Nor shall the Trustees or either of them be answerable or accountable for any loss or damage resulting from any act consented to by the Settlor or for any loss or damage resulting from any investment in or loan or advance to the partnership of "T. H. Brodhead Co";

(m) No beneficiary hereunder shall have the power or authority to anticipate in anywise any of the rents, issues, profits, income, moneys or payments herein provided to be devoted or paid to him or her or any part thereof, nor to alienate, encumber, convey, transfer or dispose of the same or of any interest therein or part thereof, in advance of payment; nor shall the same be involuntarily alienated by him or her or be subject to attachment or execution or be levied upon or taken upon any process for any debts which any such beneficiary shall have contracted or in satisfaction of any demands or obligations which he or she shall incur. All payments or distribution of either income and/or principal as hereinabove provided shall be made by the Trustees and subject to the provisions of subparagraph (k) hereinabove shall be valid and effectual only when made to the beneficiary to whom the same shall appertain and belong, and upon his or her individual receipt; provided, however, that when and while the person so entitled to receive such payment shall be without the bounds of the Territory of Hawaii, such payment may be made to any formally appointed agent of such person, but only upon the personal receipt above provided for;

Exhibit No. 1—(Continued)

(n) In the event that Mortimer J. Glueck shall be or become unable to act or shall decline to act or shall resign his office as Co-trustee hereunder, or from and after the death of Mortimer J. Glueck prior to the termination of this trust, then and in any of such events, Edouard R. L. Doty shall be substituted as Co-trustee in his place and stead and in the event that Edouard R. L. Doty shall be or become unable to act or shall decline to act or shall resign his office as Co-trustee hereunder or from and after the death of Edouard R. L. Doty prior to the termination of the trust, Bishop Trust Company, Limited, may select some person to be substituted as Trustee in the place and stead of Edouard R. L. Doty, and title to all property then comprising the trust estate shall be vested in such person and Bishop Trust Company, Limited, as Trustees without any conveyance or vesting order;

(o) It is hereby declared that this agreement shall be and is hereby made irrevocable by the Settlor and the Settlor reserves the right to amend this instrument only by adding other property to be and become a part of the estate held under the terms hereof, and the right to alter, amend, cancel or revoke any provisions of this instrument, save and except paragraphs (a), (b), (c), (d), and (e), hereof; provided, however, that in no event shall any of the property or the income thereof belonging to the trust estate be paid to or inure to the benefit of the Settlor, and provided further that any amendments made by the Settlor shall be made

Exhibit No. 1—(Continued)

by instrument in writing and acknowledged and filed with the Trustees, and that the alteration, amendment, cancellation or revocation of any provision of this instrument shall be made only with the written consent and approval of the Trustees and of all the beneficiaries hereunder;

The said Mortimer J. Glueck and Bishop Trust Company, Limited, hereby accept the within trust and covenants and agree with the Settlor that they will faithfully discharge and carry out the same.

In witness whereof, the parties hereto have executed these presents the day and year first above written.

/s/ THOMAS HOLMES BRODHEAD,
Settlor.

/s/ MORTIMER J. GLUECK, and
BISHOP TRUST COMPANY,
LIMITED,

/s/ By W. A. WHITE,
Its Vice President.

[Seal] /s/ By E. BENNER, JR.,
Its Asst. Vice Pres.,
Trustees.

Territory of Hawaii,
City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Thomas Holmes Brodhead, to me known to be the person described in and who

Exhibit No. 1—(Continued)

executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Mortimer J. Glueck, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared W. A. White and E. Benner, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Vice President respectively of Bishop Trust Company, Limited, a Hawaiian corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Di-

Exhibit No. 1—(Continued)

rectors and said W. A. White and E. Benner, Jr., acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

EXHIBIT No. 2

This special partnership agreement, dated as of the 30th day of September, 1942, made by and between Thomas Holmes Brodhead, of Honolulu, City and County of Honolulu, Territory of Hawaii, a citizen of the United States of America, hereinafter referred to as "General Partner," and Mortimer J. Glueck, of Honolulu aforesaid, a citizen of the United States of America, and Bishop Trust Company, Limited (a corporation organized and existing under the laws of the Territory of Hawaii and a majority of whose officers and directors are citizens of the United States of America), Trustees under Deed of Trust dated September 30, 1942, made by Thomas Holmes Brodhead, as Settlor, hereinafter referred to as "Special Partner,"

Witnesseth That:

The parties hereto, having mutual confidence in each other, do hereby form with each other a Special Partnership for the purpose of acquiring and thereafter conducting the business heretofore carried on by Thomas Holmes Brodhead and known as "T. H. Brodhead," from and after the close of business on September 30, 1942, and for other pur-

Exhibit No. 2—(Continued)

poses as hereinafter provided upon the following terms and conditions, that is to say:

1. Purposes: The purposes of the partnership shall be to acquire as at the close of business on September 30, 1942, all the assets and to carry on the business heretofore carried on and conducted by Thomas Holmes Brodhead under the name of "T. H. Brodhead;" to buy, sell, import, trade and deal in goods, wares and merchandise of every kind and nature and to engage in and carry on the business of wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers; to buy or otherwise acquire, own, hold, use, improve, develop, mortgage, lease or take on lease, sell, convey and in any and every other manner deal in and with and dispose of real estate, buildings and other improvements, hereditaments, easements and appurtenances of every kind in connection therewith, or any estate or interest therein of any tenure or description to the fullest extent permitted by law, and also any and all kinds of chattels, goods, wares, merchandise and agricultural, manufacturing and mercantile products and commodities and patents, licenses, debentures, securities, stocks, bonds, commercial paper, and other forms of assets, rights, and interests and evidences of property or indebtedness, tangible or intangible; to undertake and carry on any business investment, transaction, venture or enterprise which may lawfully be undertaken or carried on by a partnership and any business whatsoever which may seem to the partnership convenient or suitable to

Exhibit No. 2—(Continued)

be undertaken whereby, directly or indirectly, to promote any of its general purposes or interests or render more valuable or profitable any of its property, rights, interests or enterprises; and to acquire by purchase, lease or otherwise the property, rights, franchises, assets, business and good will of any person, firm, corporation or association engaged in or authorized to conduct any business or undertaking which may be carried on by this partnership or possessed of any property suitable or useful for any of its own purposes and carry on the same, and undertake all or any part of the obligations and liabilities in connection therewith on such terms and conditions and for such consideration as may be agreed upon and to pay for the same either all or partly in cash, stocks, bonds, debentures or other forms of assets or securities; and to effect any such acquisitions or carry on any business authorized by this agreement either by directly engaging therein or indirectly by acquiring the shares, stocks or other securities of such other business or entity and holding and voting the same and otherwise exercising and enjoying the rights and advantages incident thereto and such other business as may be necessary, suitable or proper to the accomplishment of their purposes or connected or related thereto, as the partners from time to time mutually may agree.

2. Name: The partnership shall be conducted and carried on under the firm name and style of "T. H. Brodhead Co.," and the place or places of business

Exhibit No. 2—(Continued)

shall be at Honolulu aforesaid, and/or at such other place or places as the partners may from time to time determine.

3. Capital: The capital of the partnership as of the date of the commencement of the term provided for in this agreement shall be the sum of \$80,000.00, which amount represents the book value of the net assets acquired by the partnership as of September 30, 1942; and it is agreed that the contributions of capital of each of the partners to this agreement shall be as follows:

	Amount	Interest & Percentage
Thomas Holmes Brodhead	\$40,000.00	50%
Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust of Thomas Holmes Brodhead dated September 30, 1942	\$40,000.00	50%

It is understood and agreed that Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees as aforesaid, shall be a special partner in their capacity as Trustees and not individually, and shall have all powers, rights and duties of a special partner as prescribed by Chapter 225, Revised Laws of Hawaii 1935, as the same now is or as the same may from time to time be amended, and that the special partner shall not be liable for the debts of the partnership to any extent beyond that set forth in the provisions of Section 6887 of the Revised Laws of Hawaii 1935 as the same now is or as the same may from time to time be amended.

4. Compensation of general partner and division

Exhibit No. 2—(Continued)

of profits: From time to time and as the partners may agree, the general partner actively engaged in the business of the partnership shall receive as compensation for services rendered to the partnership a salary, chargeable for purposes of computing net profits hereunder, as an expense of the business, in such amount as the partners from time to time shall agree upon constituting the reasonable value of the services rendered to the partnership. All of the remaining net profits in the partnership shall be divided for each annual period in proportion to the above stated interest of each of the partners in the original capital of the partnership, and all losses of the partnership for each annual period shall be divided among the partners in the same manner as herein provided for the division of profits. Any partner may withdraw from the partnership such portion of the profits attributable to said partner's interest as the partners may from time to time deem advisable. Amounts not withdrawn shall not be added to the capital account but shall be credited to advance accounts in the names of the respective partners for whom said amounts are being held, and no interest shall be paid on said accounts.

5. Services of the partners: The general partner shall diligently give so much of his time, attention and services to the business of the partnership as shall be required, and shall be faithful to the partnership in all transactions relating to said business, and shall not employ the capital or credit of the partnership in any other business than that of the

Exhibit No. 2—(Continued)

partnership and shall not, during the continuation of the partnership, carry on or be concerned or interested directly or indirectly in any other business which is in direct competition with the business of the partnership.

6. Bankers of the partnership: The bankers of the partnership shall be Bank of Hawaii and/or such other bankers as the partners shall from time to time determine, and all money and money instruments received by and belonging to the partnership shall be deposited to the credit of the partnership account with the partnership bankers except that such a petty cash fund as may be mutually agreed upon between the partners from time to time may be kept on hand for use in the business.

7. Limitation on powers of partners: The general partner only shall have authority to transact the business of the partnership or incur obligations or liabilities and shall establish the policy of the partnership. The special partner at all times may investigate the partnership affairs and advise the general partner as to its management. The general partner shall not, without the consent of the other partner, draw, accept or sign any bill of exchange or promissory note or contract any debt on the part of the partnership or employ any of the money or effects thereof or in any manner pledge the credit thereof except in the usual course of the business subject to the provisions of this agreement; nor without obtaining the consent thereto of the other partner assume any liability for another or

Exhibit No. 2—(Continued)

others by means of endorsement or by becoming guarantor, surety or insurer.

8. Partners not to assign interest: The general partner shall not assign or mortgage his share of or interest in or any part of the shares of or interest in the partnership or the assets or profits thereof. The special partner may assign its share of or interest in the partnership only with the consent of the general partner evidenced by written consent attached to such assignment and filed in the office of the partnership, and the general partner shall have full power and discretion to give or withhold such consent.

9. Books of account and access thereto: Proper partnership books of account shall be kept by the general partner and entry shall be made therein of all transactions and all such matters and things as usually are entered in books of account kept by persons engaged in the same or similar businesses, such books of account and all documents, letters, papers, instruments and records belonging to the partnership shall be kept at the office of the partnership and each partner shall, at all times, have full and free access to examine and copy the same. The books of the partnership shall be audited periodically at such times as the partners shall determine but not less than once a year and copies of the Auditor's report shall be delivered to each partner.

10. Annual account: A general account shall be taken annually of the assets and liabilities of the partnership of all dealings and transactions of the

Exhibit No. 2—(Continued)

same during the preceding year of all matters and things usually included in accounts of a like nature taken by persons engaged in like businesses, and in taking such account a just valuation shall be made of all items requiring valuation, and such annual account shall state the capital of the partnership and the interest of each partner therein at the end of the period of the accounting, such general account to be sent to each partner, and unless within three (3) months any partner shall object to the same, the same shall be binding upon the partners except for manifest errors of fraud.

11. Determination of partnership: The partnership may be determined by the general partner at any time upon giving not less than two (2) months previous notice in writing to the other partner of his intention, and at the expiration of such notice, the partnership shall determine accordingly. Upon the determination of the partnership from whatever cause, the general partner agrees that he will make a true, just and final account of all things relating to said business and in all things duly adjust the same. After the affairs of the partnership are adjusted, its debts paid and discharged and the expense of liquidation shall have been paid, the balance then remaining shall be applied, first, in payment to such partner or his representative of the balance due to each partner as shown in the advance account of said partner, then in payment of his share of the capital as shown on the books of the partnership as of the close of business of the partnership, and the balance shall be divided in

Exhibit No. 2—(Continued)

the same manner as hereinabove provided for the division of profits. In the event that the balance remaining after the payment of said debts and expenses and the balance due to each partner as shown in the advance account of said partner is insufficient to pay the full capital account of all the partners, then such balance shall be applied, first, in payment to the special partner of its share of the capital as shown on the books of the partnership as at the close of business of the partnership, then in payment on account of the capital account of the general partner. In the event that the balance remaining after the payment of said debts and expenses is insufficient to pay in full the balance due to all the partners as shown in the advance account of each partner, then the amount shown as due to the special partner shall be paid first, and the remaining balance, if any, paid to the general partner on account of the balance shown in his advance account. The partners shall execute such instruments for facilitating and effecting the realization and the division of the assets of the partnership and for their mutual indemnity and release and otherwise as may be requisite or proper.

12. **Death of General Partner:** If the general partner shall die before the expiration of the partnership, his representative shall have the option (such option to be declared by notice in writing given to the special partner within six (6) months after his death) of succeeding to or carrying on the interest of the deceased partner in said business as a general partner in accordance with the

Exhibit No. 2—(Continued)

laws of the Territory of Hawaii, as the same now is or as the same may from time to time be amended; and if such option shall be exercised, the said business shall be carried on during the residue of said term as from the death of said general partner as nearly as may be according to the provisions of these presents, but so that the representative of said general partner shall succeed to his share in said business and be substituted for him as a general partner; provided that in case the representative of said general partner shall elect to become a general partner by virtue of such option, as aforesaid, all proper instruments for carrying out the provisions of this present clause shall be executed and made between the representative and the surviving partner, and all proper notices, publications, petitions of court proceedings shall be made, executed or taken at the expense of the partnership.

13. Winding up on death of general partner: In case the representative of said general partner shall not exercise his option to succeed to the deceased partner's share in said business as a general partner, then the partnership shall be wound up at the expiration of six (6) calendar months from the date of such death or such sooner time as the surviving partner and the representative of the deceased partner may agree upon and its affairs settled in the manner provided in paragraph 11 hereof.

14. Bankruptcy: If the general partner shall at any time during the partnership become incapacitated, bankrupt or insolvent or enter into any com-

Exhibit No. 2—(Continued)

position or arrangement with or for the benefit of his creditors, or commit any breach of any of the stipulations or agreements herein contained, the special partner may determine the partnership by giving notice in writing to such general partner and may publish notice of dissolution of the partnership without prejudice to its remedies for any incidental breach of any of the stipulations or agreements aforesaid.

15. Arbitration: If at any time during the continuance of the partnership or after the dissolution or termination thereof any dispute, difference or question shall arise between the partners touching the partnership or accounts or transactions thereof or the dissolution or winding up thereof or the construction, meaning or effect of these presents or anything herein contained, or the rights or liabilities of the partners under these presents or otherwise in relation to the premises, then every such dispute, difference or question shall, at the desire of either partner be submitted to and be determined by three arbitrators in the manner determined by Chapter 225, Revised Laws of Hawaii 1935, as the same now is or may from time to time be amended, in which case any partner may give to the other partner written notice of his or its desire to have an arbitration of the matter in dispute and name one of the arbitrators in said written notice, whereupon the other partner, within ten (10) days after the receipt of such notice, shall name a second arbitrator, and in case of failure to do so the arbitrator already appointed shall name such second arbitrator and the two arbitrators so ap-

Exhibit No. 2—(Continued)

pointed (in either manner) shall elect and appoint a third arbitrator, and in the event that any two arbitrators so appointed shall fail to appoint a third arbitrator within ten (10) days after the naming of the second arbitrator either party may have the third arbitrator selected or appointed by the person being the Chief Justice of the Supreme Court of the Territory of Hawaii, holding office at that time, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of them (including the disposition of the costs of arbitration) shall be final, conclusive and binding upon all parties unless the same shall be vacated or corrected as by said statute provided. The arbitrators shall have the powers and duties prescribed by said statute and judgment may be entered upon any such award by the Circuit Court of the First Judicial Circuit as provided in said statute.

16. Amendments: If at any time during the continuance of this partnership the parties hereto shall deem it necessary or expedient to make any amendment in any article, clause, matter or thing herein contained for the more advantageous or satisfactory management of the partnership business, it shall be lawful for them so to do by any writing under their joint hands, endorsed on these articles or entered in any of the partnership books and all such alterations shall be adhered to and have the same effect from and after the adoption of the same as if the same had originally been embodied in and formed a part of these presents.

17. Term of partnership: The term of the part-

Exhibit No. 2—(Continued)

nership shall be for a period commencing as of October 1, 1942, and ending September 30, 1952, and subject to the provisions of paragraphs 11 and 13 hereinabove, shall continue from year to year ending on the 30th day of September of each year thereafter until terminated by either partner giving not less than three (3) months' written notice of his or its intention to terminate the partnership to the other partner.

18. Definitions: The term "General Partner" as used herein shall include the heirs, executors, administrators and assigns of the general partner, and the term "Special Partner" as used herein shall include said Mortimer J. Glueck and Bishop Trust Company, Limited, in their capacity as Trustees under Deed of Trust dated September 30, 1942, and not in their individual capacity, and their successors in trust and assigns, and the term "Partners" as used herein shall include the general partner and the special partner as herein defined.

In Witness Whereof, the parties hereto have executed these presents as of the day and year first above written.

/s/ THOMAS HOLMES BRODHEAD,
General Partner.

/s/ MORTIMER J. GLUECK,
BISHOP TRUST COMPANY,
LIMITED

/s/ By W. A. WHITE, Its Vice Pres.,
[Seal] /s/ By E. BENNER, JR.,
Its Asst. Vice Pres.

Trustees under Deed of Trust of Thomas Holmes Brodhead, dated Sept. 30, 1942. Special Partner

Exhibit No. 2—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Thomas Holmes Brodhead, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Mortimer J. Glueck, Co-Trustee with Bishop Trust Company, Limited, a Hawaiian corporation, under Deed of Trust, dated September 30, 1942, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as Co-Trustee.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me appeared W. A. White and E. Benner, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant

Exhibit No. 2—(Continued)

Vice President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Co-Trustee with Mortimer J. Glueck, under Deed of Trust, dated September 30, 1942, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said W. A. White and E. Benner, Jr. acknowledged said instrument to be the free act and deed of said corporation as said Co-Trustee.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

EXHIBIT No. 3

BILL OF SALE

This indenture, made as of the close of business on September 30, 1942, by and between Thomas Holmes Brodhead, of Honolulu, City and County of Honolulu, Territory of Hawaii, a citizen of the United States of America, hereinafter called the "Seller," and T. H. Brodhead Company, a special partnership composed of Thomas Holmes Brodhead, as general partner, and Mortimer J. Glueck, of Honolulu aforesaid, who is a citizen of the United States of America, and Bishop Trust Company, Limited, a Hawaiian corporation and a majority of whose officers and directors are citizens of the United States of America, Trustee under deed of trust dated September 30, 1942, made by Thomas Holmes Brodhead as Settlor, as Special Partner,

Exhibit No. 3—(Continued)

having its principal place of business in Honolulu aforesaid, hereinafter called the "Partnership",

Witnesseth That:

The Seller, for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, and other good and valuable consideration to him paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer, set over, confirm and deliver unto the Partnership and its successors and assigns forever;

All and singular, the rights, property, assets and privileges owned by the Seller and used in the business known as "T. H Brodhead," as shown on the balance sheet prepared by Cameron & Johnstone, dated as of the close of business on September 30, 1942, a copy of which is attached hereto, incorporated herein and made a part hereof for all purposes, including particularly but not in anywise limiting the generality of the foregoing, all chattels, leaseholds, improvements, machines and equipment, all furniture, office equipment, office machinery, appliances and devices, all files, records, books, accounts, inventories, together with all other personal property, goods and chattels, of every kind and description and wheresoever situate, all good will, trade names, trade connections, licenses, and all contracts and agreements, including any and all rights under policies of indemnity, fidelity or other bonds or insurance of any and every kind, or cash on hand or in bank or banks, bonds, mortgages, conditional sales agreements, accounts and bills receivable, promissory notes, claims, demands, equi-

Exhibit No. 3—(Continued)

ties and choses in action, and all other property and assets, tangible and intangible, of every kind or nature owned or claimed by the Seller and used by him in the business now carried on and shown on said balance sheet, save and except the consideration received by him from the partnership as the purchase price for the foregoing;

To have and to hold the same, together with all improvements, rights, easements, privileges, rents, issues and profits and appurtenances to the same or any part thereof belonging or appertaining or held and enjoyed therewith, unto the Partnership, its successors and assigns, absolutely and forever or in fee simple as the case may be.

And the partnership, in consideration of the foregoing, does hereby covenant and agree that it will and by these presents does assume all of the liabilities, obligations and indebtedness of the Seller, shown on said balance sheet attached hereto, and does covenant and agree to pay and discharge the same as fully and completely as though the said liabilities, obligations and indebtedness had been incurred directly by said Partnership, and to indemnify and hold harmless the said Seller from all liability, expense or obligation upon the same or arising in connection therewith;

And for the consideration aforesaid, the Seller, for himself and his heirs, executors and administrators, does hereby irrevocably appoint the Partnership, its successors and assigns, his true and lawful attorney in his name, place and stead to ask, demand, sue for and recover any and all moneys, assets or other property conveyed and transferred

Exhibit No. 3—(Continued)

hereby or intended so to be and the rights and benefits therefor, and does further covenant that he, the Seller, will at any time at the request of the Partnership make, do execute and deliver all such receipts, powers of attorney and further instrument or instruments for the better and more effectual vesting and confirming of all right and interest, property, claims and demands hereinabove conveyed and assigned or intended so to be as the Partnership reasonably may require.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written.

/s/ THOMAS HOLMES BRODHEAD,
Seller.

T. H. BRODHEAD COMPANY,
a Special Partnership,

/s/ By THOS. H. BRODHEAD,
General Partner,
Buyer.

Territory of Hawaii,
City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Thomas Holmes Brodhead, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Exhibit No. 3—(Continued)

Territory of Hawaii,
City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Thomas H. Brodhead, to me personally known, who, being by me duly sworn, did say that he is a General Partner of T. H. Brodhead Company, a special partnership; that said instrument was signed on behalf of said partnership by authority of all the partners; and that said Thos. H. Brodhead acknowledged said instrument to be the free act and deed of said partnership.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires June 30, 1945.

T. H. BRODHEAD

BALANCE SHEET AS AT SEPTEMBER 30, 1942

ASSETS

CURRENT ASSETS

Cash in banks:

Anglo-California National

Bank

\$ 5,125.73

Bank of Hawaii

16,406.61

\$ 21,532.34

Accounts receivable

64,667.35

Employment taxes receivable

from employees:

Public welfare

80.33

Social security

79.85

160.18

Exchange account

122.92

Merchandise inventory

27,310.44

Total current assets.....

113,793.23

Exhibit No. 3—(Continued)

FIXED ASSETS, Schedule I

Automobiles, at cost	\$4,548.95		
Less: Depreciation reserve	2,203.28	2,345.67	
		<hr/>	
Furniture and fixtures	2,207.75		
Less: Depreciation reserve	530.33	1,677.42	4,023.09
		<hr/>	
Investment in Brodhead- Warren, Ltd.			6,100.00
Advance payments for merchandise			54,682.41
			<hr/>
Total Assets			\$178,598.73
			<hr/>

LIABILITIES and NET WORTH

CURRENT LIABILITIES

Account payable	\$72,448.56		
Loan payable, Bank of Hawaii	9,000.00		
Taxes payable	12,900.17		
Accrued salaries payable.....	4,000.00		
Accrued expense	250.00	\$ 98,598.73	
		<hr/>	
CAPITAL			80,000.00
			<hr/>
Total liabilities and net worth			\$178,598.73
			<hr/>

EXHIBIT No. 4

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

CERTIFICATE OF SPECIAL PARTNERSHIP

The undersigned, a Special Partnership, hereby certify in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935, as follows:

1. The name under which the partnership is to be conducted is "T. H. Brodhead Co.";

2. The general nature of the business intended to be transacted is to buy, sell, import, export, trade and deal in goods, wares and merchandise of every kind or nature and to engage in and carry on the business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers, and such other business as may be necessary, suitable or proper to the accomplishment of the purposes or connected with or related thereto as the partners from time to time mutually may agree; and the place or places where the business is to be transacted is at Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such other place or places as the partners from time to time shall determine;

3. The names of the partners and the residence of each are as follows:

Thomas Holmes Brodhead, General Partner,
Honolulu, T. H.

Exhibit No. 4—(Continued)

Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated September 30, 1942, made by Thomas Holmes Brodhead, as Settlor, Special Partner, Honolulu, T.H.

4. The amount of capital which the Special Partner has contributed to the special partnership assets is \$40,000.00.

5. The term for which the partnership is to exist commenced on October 1, 1942, and will continue until September 30, 1952, and thereafter from year to year until terminated as provided in that certain Special Partnership Agreement dated September 30, 1942.

In Witness Whereof the undersigned have caused this certificate to be executed this 23rd day of December, 1942.

/s/ THOMAS HOLMES BRODHEAD,
General Partner

/s/ MORTIMER J. GLUECK,
BISHOP TRUST COMPANY,
LIMITED,

[Seal] /s/ By W. A. WHITE, Its Vice President
Trustees as aforesaid
Special Partner

Territory of Hawaii,
City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Thomas Holmes Brodhead, to me

Exhibit No. 4—(Continued)

personally known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,
City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared Mortimer J. Glueck, to me known, who, being by me duly sworn, did say that he is one of the Trustees under that certain Deed of Trust dated September 30, 1942, made by Thomas Holmes Brodhead, as Settlor; and acknowledged that he executed the foregoing instrument as his free act and deed as said Trustee.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,
City and County of Honolulu—ss:

On this 23rd day of December, 1942, before me personally appeared W. A. White, to me known, who, being by me duly sworn, did say that he is the Vice President of Bishop Trust Company, Limited, a Hawaiian corporation, one of the Trustees under

Exhibit No. 4—(Continued)

that certain Deed of Trust dated September 30, 1942, made by Thomas Holmes Brodhead, as Settlor; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that the instrument was signed and seal in behalf of said corporation as Trustee aforesaid by authority of its Board of Directors; and the said W. A. White acknowledged said instrument to be the free act and deed of said corporation as said Trustee.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

AFFIDAVIT OF SPECIAL PARTNERSHIP
REQUIRED BY SECTION 6875, REVISED
LAWS OF HAWAII 1935.

Territory of Hawaii,
City and County of Honolulu—ss:

Thomas Holmes Brodhead, being first duly sworn,
on oath doth depose and say:

That he is a resident of Honolulu, City and County
of Honolulu, Territory of Hawaii; that Mortimer J.
Glueck and Bishop Trust Company, Limited, Trus-
tees under Deed of Trust dated September 30, 1942,
made by Thomas Holmes Brodhead, as Settlor, is a

Exhibit No. 4—(Continued)

Special Partner in the partnership of T. H. Brodhead Co.; that as Special Partner said Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees as aforesaid, actually have paid into the partnership as a capital contribution the sum of \$40,000.00 in lawful money.

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ THOMAS HOLMES BRODHEAD

Subscribed and sworn to before me this 23rd day of December, 1942.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires June 30, 1945.

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

AFFIDAVIT OF SPECIAL PARTNERSHIP
REQUIRED BY SECTION 6875, REVISED
LAWS OF HAWAII 1935

Territory of Hawaii,
City and County of Honolulu—ss:

Mortimer J. Glueck, being first duly sworn, on oath doth depose and say:

That he is one of the Trustees under the Deed of

Exhibit No. 4—(Continued)

Trust dated September 30, 1942, made by Thomas Holmes Brodhead as Settlor; that he and Bishop Trust Company, Limited, a Hawaiian corporation, as Trustees under said Deed of Trust and not in their individual capacity, are a Special Partner in the partnership of T. H. Brodhead Co.; that as Special Partner they actually have paid into the partnership as a capital contribution the sum of \$40,000.00 in lawful money.

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ MORTIMER J. GLUECK

Subscribed and sworn to before me this 23rd day of December, 1942.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires June 30, 1945.

Exhibit No. 4—(Continued)

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

AFFIDAVIT OF SPECIAL PARTNERSHIP
REQUIRED BY SECTION 6875, REVISED
LAWS OF HAWAII 1935

Territory of Hawaii,
City and County of Honolulu—ss:

W. A. White, being first duly sworn, on oath doth
depose and say:

That he is Vice-President of Bishop Trust Com-
pany, Limited, a Hawaiian corporation, and as such
is authorized to make this Affidavit on its behalf;

That said Bishop Trust Company, Limited, is one
of the Trustees under the Deed of Trust dated Sep-
tember 30, 1942, made by Thomas Holmes Brodhead
as Settlor; that said Bishop Trust Company, Lim-
ited, a Hawaiian corporation, and Mortimer J.
Glueck, as Trustees under said Deed of Trust and
not in their individual capacity, is a Special Partner
in the partnership of T. H. Brodhead Co.; that as
Special Partner said Mortimer J. Glueck and Bishop
Trust Company, Limited, Trustee as aforesaid, ac-
tually have paid into the partnership as a capital
contribution the sum of \$40,000.00 in lawful money.

And further affiant sayeth not except that this

Exhibit No. 4—(Continued)

Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ W. A. WHITE

Subscribed and sworn to before me this 23rd day of December, 1942.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires June 30, 1945.

EXHIBIT No. 5

(Deed of Trust—Elizabeth S. Brodhead Trust)

This Indenture, dated this 28th day of February, 1943, by and between Elizabeth S. Brodhead, who is a citizen of the United States of America, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Settlor", and Mortimer J. Glueck, of Honolulu aforesaid, who is a citizen of the United States of America, and Bishop Trust Company, Limited, a Hawaiian corporation and a majority of whose officers and directors are citizens of the United States of America, hereinafter called the "Trustees",

Witnesseth That:

The Settlor, in consideration of the love and affection she bears the beneficiaries and of the acceptance by the Trustees of the trust herein created, does hereby transfer, set over and deliver to the Trustees, their successors in trust and assigns, the sum of

Exhibit No. 5—(Continued)

Ten Thousand and no/100ths Dollars (\$10,000.00);

To Have and to Hold the same, together with all other property which may hereafter be or become a part of the trust estate hereby created, unto the Trustees, their successors in trust and assigns, in trust nevertheless for the uses and purposes hereinafter stated, that is to say:

(a) The Trustees shall purchase the fifty per cent (50%) capital interest of the special partner in the partnership known as "T. H. Brodhead Co.", a special partnership duly organized and operating under that certain Special Partnership Agreement dated September 30, 1942, paying \$40,000.00 therefor, said amount being the fair and reasonable value of said interest duly ascertained as of February 28, 1943, and the Trustees shall pay \$10,000.00 cash therefor and agree to pay the balance of the purchase price out of the assets of the trust estate, upon such terms and conditions as the Trustees may deem advisable, and shall become and continue to be a special partner therein;

(b) The Trustees shall accumulate all income from the said trust estate during the continuance thereof, and except as hereinafter provided, all of said net income shall be added to and become a part of the corpus of the trust estate and be invested and reinvested as a part of said corpus during the existence of this trust;

(c) The Trustees shall pay one-half ($\frac{1}{2}$) of the accumulated net income from said trust estate in equal shares to the children of the Settlor then

Exhibit No. 5—(Continued)

living, but not in excess of the sum of \$10,000.00 to each of said children at the time that the youngest child of the Settlor then living attains the age of twenty-three (23) years, and shall pay all of the accumulated net income from said trust estate in equal shares to the children of the Settlor then living, but not in excess of the sum of \$10,000.00 to each of said children at the time that the youngest child of the Settlor then living attains the age of twenty-eight (28) years, Provided, However, that in the event that there is not sufficient cash included in the assets of said trust estate at the time that such payments become due and payable the Trustees may satisfy the obligation herein provided by transfer, assigning, and setting over to the said children of the Settlor the right of the Trustees to receive any sums of money that may be due to them as a special partner from the partnership of T. H. Brodhead Co., or any other asset owned by them as such Trustees;

(d) This trust shall cease and determine at the time that the youngest child of the Settlor attains the age of thirty-three (33) years (or would have attained such age if living) and the Trustees shall thereupon transfer, set over and deliver all the property then comprising the trust estate, together with all accumulated income thereof, absolutely and free and clear of any trusts in equal shares to the children of the Settlor then surviving and the lawful issue of any of said children who may have predeceased the Settlor (said issue to take per stirpes

Exhibit No. 5—(Continued)

and not per capita), and if there be no children or lawful issue of the Settlor her surviving, then to those persons other than the Settlor and Thomas H. Brodhead, husband of the Settlor, who would be the heirs-at-law of the last surviving of the children of the Settlor under the statutes of descent of the Territory of Hawaii in force and effect at the time of his or her death, the same as if he or she had died intestate at that time; Provided, However, that if not terminated prior thereto, the Trustees may determine this trust at any time (but not more than one (1) year) which to the Trustees may seem best after the Trustees shall cease to be a special partner in the partnership known as "T. H. Brodhead Co.";

(e) The Trustees shall receive, hold, manage and control the said trust estate, collect the income therefrom and pay all charges incident to trust estates and properly payable by said trust estate therefrom; and the Settlor authorized the Trustees to retain either permanently or temporarily or for such period of time as they may deem expedient any property conveyed, assigned or delivered to the Trustees by the Settlor of whatever nature; and the Settlor directs that the said Trustees shall not be held liable for any loss resulting to said trust estate by reason of the Trustees' retaining any such property or for any error of judgment in this respect;

(f) The Settlor authorizes and empowers the Trustees to sell at public or private sale, convert,

Exhibit No. 5—(Continued)

transfer, exchange, mortgage, hypothecate and otherwise deal in or dispose of the whole or any part of the property, real, personal and mixed, which may be from time to time a part of the trust estate, with power to accept any purchase money mortgage or mortgages for any part of the purchase or exchange price; to invest and reinvest the whole or any part of the assets of the said trust estate, and in investing and reinvesting any assets of said trust estate the Trustees may invest in common or preferred stocks of corporations, bonds, notes, debentures, participation or investment certificates and/or in any other property, real or personal, in so far as in their judgment they shall deem such investments advisable, it being the intention of the Settlor, under the foregoing provisions, to grant to the Trustees full power to invest and reinvest money in such investments as they shall deem desirable and suitable investments for trust funds without being restricted to the classes of investments which trustees are permitted by law to make; Provided, However, that the Trustees shall obtain the consent of the Settlor to make such investments during her lifetime, and Provided Further, that in the event the Settlor shall die before the termination hereof, the Trustees shall thereafter be restricted in the making of investments of trust funds to the classes of investments which trustees are permitted by law to make, except that in any event the Trustees may, without liability for any losses resulting therefrom, continue to make payments on account of its pur-

Exhibit No. 5—(Continued)

chase of its interest in or make advances or loans to the partnership known as "T. H. Brodhead Co.", its successors and assigns; the Settlor authorizes and empowers the Trustees, upon any increase of the capital stock of any corporation in which said trust estate shall own shares, to exercise any preemptive rights to such shares to which said trust estate may be entitled and/or to subscribe for such additional shares as in the judgment of the Trustees shall be an advisable investment; and for this purpose and for other purposes of this trust, the Settlor authorizes and empowers the Trustees to borrow money either from themselves or from others and upon such terms and conditions as they may deem appropriate; the Trustees shall have the right and power to vote either directly or by proxy the stock of any corporation that may be a part of said trust estate from time to time at all meetings of stockholders as the Trustees may deem best;

(g) Stock dividends shall be treated as capital of the trust estate and all stock acquired by the Trustees under the exercise of rights to subscribe or the net proceeds realized by the Trustees from the sale of rights to subscribe shall be treated as capital of the trust estate and all other corporate distributions shall be treated as income; Provided, However, that where a distribution is made through the reduction of any corporate stock held by the Trustees, or, in the exclusive discretion of the Trustees it appears to be made in or as a result of a partial or complete liquidation or dissolution of the

Exhibit No. 5—(Continued)

corporation, the Trustees may in their discretion make such apportionment of any such distribution between income and capital as to them may seem just; the Trustees shall have full power and authority to decide and determine in all doubtful cases what property or moneys received by them is capital and what is income; and also in doubtful cases to decide and determine what expenses and other charges are payable out of income and what out of capital; and also in all doubtful cases to decide and determine what proportion of payments for expenses of or charges against the trust estate are payable from income and what from capital; and all beneficiaries shall be bound by the decision and determination of the Trustees in regard to all such allocations between capital and income; the Trustees shall have authority in and discretion to prorate during the year and withhold from the income received by the trust estate an amount sufficient to pay proportionate shares of the expenses payable by the trust estate so that said payments of net income may be more regular and even in amount, and to withhold such amounts of income and/or principal as they may deem necessary to protect themselves from any possible liability for taxes and/or costs or expenses in connection with or arising out of possible claims therefor;

(h) The Settlor may transfer, convey and assign to the Trustees any property in addition to that hereinbefore referred to, to be held upon the trust hereby created, and thereafter such additional prop-

Exhibit No. 5—(Continued)

erty shall be and form a part of the trust estate;

(i) The Trustees shall render annual statements of account to the persons who are the beneficiaries of this trust, as hereinabove provided, but the Trustees shall not be required to account in any court unless requested so to do by a beneficiary; Provided, However, that the Trustees may whenever they shall deem it advisable file accounts in any court having jurisdiction thereof for approval, the costs of said proceedings to be paid out of the trust estate;

(j) If any person entitled to receive any of the income and/or capital of the trust estate shall be a minor, the Trustees may pay the share of income and/or capital to which said minor is entitled to either parent of or to the natural or legally appointed guardian of such minor, and the receipt of such parent or natural or legally appointed guardian shall be a complete release, discharge and acquittance of the Trustees to account further for any payment or payments so made, and if any beneficiary is a minor, the statements of account may be furnished to either parent of or to the natural or legally appointed guardian of such minor beneficiary;

(k) Bishop Trust Company, Limited, the corporate Trustee hereunder, shall have the custody and safekeeping of all moneys and securities belonging to the trust estate which are received or collected by the Trustees. Neither Trustee hereunder shall

Exhibit No. 5—(Continued)

be answerable or accountable for any act of the other Trustee in which he or it shall not participate, nor for the custody of any property except as shall come to his or its own possession or personal control, nor for any loss or damage resulting from any error of judgment or otherwise except through his or its own gross neglect or wilful default. Nor shall the Trustees or either of them be answerable or accountable for any loss or damage resulting from any act consented to by the Settlor or for any loss or damage resulting from any investment in or loan or advance to the partnership of "T. H. Brodhead Co.", its successors and assigns;

(1) No beneficiary hereunder shall have the power or authority to anticipate in anywise any of the rents, issues, profits, income, moneys or payments herein provided to be devoted or paid to him or her or any part thereof, nor to alienate, encumber, convey, transfer or dispose of the same or of any interest therein or part thereof, in advance of payment; nor shall the same be involuntarily alienated by him or her or be subject to attachment or execution or be levied upon or taken upon any process for any debts which any such beneficiary shall have contracted or in satisfaction of any demands or obligations which he or she shall incur. All payments or distribution of either income and/or principal as hereinabove provided shall be made by the Trustees and subject to the provisions of subparagraph (j) hereinabove shall be valid and effectual only when made to the beneficiary to whom the

Exhibit No. 5—(Continued)

same shall appertain and belong, and upon his or her individual receipt; Provided, However, that when and while the person so entitled to receive such payment shall be without the bounds of the Territory of Hawaii, such payment may be made to any formally appointed agent of such person, but only upon the personal receipt above provided for;

(m) In the event that Mortimer J. Glueck shall be or become unable to act or shall decline to act or shall resign his office as Co-trustee hereunder, or from and after the death of Mortimer J. Glueck prior to the termination of this trust, then and in any of such events, Edouard R. L. Doty shall be substituted as Co-trustee in his place and stead and in the event that Edouard R. L. Doty shall be or become unable to act or shall decline to act or shall resign his office as Co-trustee hereunder or from and after the death of Edouard R. L. Doty prior to the termination of the trust, Bishop Trust Company, Limited, may select some person to be substituted as Trustee in the place and stead of said Edouard R. L. Doty, and title to all property then comprising the trust estate shall be vested in such person and Bishop Trust Company, Limited, as Trustees without any conveyance or vesting order;

(n) It is hereby declared that this agreement shall be and is hereby made irrevocable by the Settlor and the Settlor reserves the right to amend this instrument only by adding other property to be and become a part of the estate held under the terms hereof, and the right to alter, amend, cancel

Exhibit No. 5—(Continued)

or revoke any provisions of this instrument, save and except paragraphs (a), (b), (c), and (d) hereof; Provided, However, that in no event shall any of the property or the income thereof belonging to the trust estate be paid to or inure to the benefit of the Settlor, and Provided Further, that any amendments made by the Settlor shall be made by instrument in writing and acknowledged and filed with the Trustees, and that the alteration, amendment, cancellation or revocation of any provision of this instrument shall be made only with the written consent and approval of the Trustees and of all the beneficiaries hereunder;

The said Mortimer J. Glueck and Bishop Trust Company, Limited, hereby accept the within trust and covenants and agree with the Settlor that they will faithfully discharge and carry out the same.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written.

/s/ ELIZABETH S. BRODHEAD,
Settlor

/s/ MORTIMER J. GLUECK,
BISHOP TRUST COMPANY,
LIMITED

[Seal] /s/ By W. A. WHITE,
Its Vice President

/s/ By G. W. FISHER,
Its Asst. V.P.
Trustees

Exhibit No. 5—(Continued)

Territory of Hawaii,
City and County of Honolulu—ss:

On this 3rd day of May, 1943, before me personally appeared Elizabeth S. Brodhead, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,
City and County of Honolulu—ss:

On this 3rd day of May, 1943, before me personally appeared Mortimer J. Glueck, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,
City and County of Honolulu—ss:

On this 4th day of May, 1943, before me appeared W. A. White and G. W. Fisher, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Asst. Vice Pres., respectively, of Bishop Trust Company, Limited,

Exhibit No. 5—(Continued)

a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said W. A. White and G. W. Fisher acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

EXHIBIT No. 6

ASSIGNMENT

This Indenture, made this 28th day of February, 1943, by and between Mortimer J. Glueck, of Honolulu, City and County of Honolulu, Territory of Hawaii, who is a citizen of the United States of America, and Bishop Trust Company, Limited, a Hawaiian corporation, a majority of whose officers and directors are citizens of the United States of America, Trustees under Deed of Trust of Thomas Holmes Brodhead, dated September 30, 1942, hereinafter called the "Assignors", and Mortimer J. Glueck, of Honolulu aforesaid, who is a citizen of the United States of America, and Bishop Trust Company, Limited, a Hawaiian corporation, a majority of whose officers and directors are citizens of the United States of America as aforesaid, Trus-

Exhibit No. 6—(Continued)

tees under Deed of Trust of Elizabeth S. Brodhead, dated February 28, 1943, hereinafter called the "Assignees",

Witnesseth That:

The Assignors, for and in consideration of the sum of Ten Thousand and No/100ths Dollars (\$10,000.00), lawful money of the United States of America, and other good and valuable consideration to them paid, the receipt of which is hereby acknowledged, do hereby assign, transfer, set over, and deliver unto the Assignees, their successors and assigns in trust, all of their right, title and interest in and to their fifty per cent (50%) capital interest of the special partnership known as "T. H. Brodhead Co.", a partnership duly organized and operating under that certain Special Partnership Agreement dated September 30, 1942, Provided, However, that nothing herein contained shall constitute an assignment of any of their right to the advance account covering the share of the Assignors in the undivided profits of said special partnership to February 28, 1943.

To Have and to Hold the same unto the Assignees, their successors and assigns in trust, absolutely.

And Thomas Holmes Brodhead, who is a citizen of the United States of America, of Honolulu aforesaid, being the General Partner in said Special Partnership known as "T. H. Brodhead Co.", hereby consents to the assignment of said partnership interest as herein provided.

In Witness Whereof, the parties hereto have exe-

Exhibit No. 6—(Continued)

cutted these presents as of the day and year first above written.

/s/ MORTIMER J. GLUECK, and
[Seal] BISHOP TRUST COMPANY,
LIMITED,

Trustees under Deed of Trust of Thomas Holmes
Brodhead, dated September 30, 1942, and not
individually.

/s/ By W. A. WHITE, Its Vice Pres.,

/s/ By G. W. FISHER, Its Asst. V.P.

/s/ THOMAS HOLMES BRODHEAD

Territory of Hawaii,

City and County of Honolulu—ss:

On this 3rd day of May, 1943, personally appeared before me Thomas Holmes Brodhead, known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss:

On the 3rd day of May, 1943, before me personally appeared Mortimer J. Glueck, Co-Trustee with Bishop Trust Company, Limited, a Hawaiian corporation, under Deed of Trust of Thomas Holmes

Exhibit No. 6—(Continued)

Brodhead, dated September 30, 1942, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as said Co-trustee.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,
City and County of Honolulu—ss:

On this 4th day of May, 1943, before me appeared W. A. White and G. W. Fisher, to me personally known, who, being by me duly sworn, did say that they are the Vice President and the Assistant Vice President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Co-Trustee with Mortimer J. Glueck under Deed of Trust of Thomas Holmes Brodhead, dated September 30, 1942, and that the seal affixed to said instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said W. A. White and G. W. Fisher acknowledged said instrument to be the free act and deed of said corporation as said Co-trustee.

[Seal] FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

EXHIBIT No. 7

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

CERTIFICATE OF CHANGE OF SPECIAL
PARTNERSHIP

The undersigned, a Special Partnership, hereby certify in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935, as follows:

1. The name under which the partnership is to be conducted is "T. H. Brodhead Co.";

2. The general nature of the business intended to be transacted is to buy, sell, import, export, trade and deal in goods, wares and merchandise of every kind or nature and to engage in and carry on the business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers, and such other business as may be necessary, suitable or proper to the accomplishment of the purposes or connected with or related thereto as the partners from time to time mutually may agree; and the place or places where the business is to be transacted is at 843 Kaahumanu Street, Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such other place or places as the partners from time to time shall determine;

3. The names of the partners and the residence of each are as follows:

Exhibit No. 7—(Continued)

Thomas Holmes Brodhead, General Partner,
Honolulu, T.H.

Mortimer J. Glueck and Bishop Trust Company,
Limited, Trustees under Deed of Trust of Elizabeth
S. Brodhead, dated February 28, 1943, Special Part-
ner, Honolulu, T.H.

Mortimer J. Glueck and Bishop Trust Company,
Limited, Trustees under Deed of Trust of Thomas
Holmes Brodhead, dated September 30, 1942, have
withdrawn from the Special Partnership;

4. The amount of capital which the Special Part-
ner has contributed to the partnership assets is
\$40,000.00.

5. The change in the Special Partnership be-
came effective on February 28, 1943. The Special
Partnership will continue until September 30, 1952,
and thereafter from year to year until terminated
as provided in that certain Special Partnership
Agreement dated September 30, 1942.

In Witness Whereof, the undersigned have
caused this certificate to be executed this 3rd day of
May, 1943.

/s/ THOMAS HOLMES BRODHEAD,

/s/ MORTIMER J. GLUECK, and

[Seal] BISHOP TRUST COMPANY,
LIMITED,

Trustees as aforesaid.

/s/ By W. A. WHITE, Its Vice Pres.,

/s/ By G. W. FISHER, Ist Asst. V.P.

Exhibit No. 7—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss:

On this 3rd day of May, 1943, before me personally appeared Thomas Holmes Brodhead, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 3rd day of May, 1943, before me personally appeared Mortimer J. Glueck, Co-trustee with Bishop Trust Company, Limited, a Hawaiian corporation, under Deed of Trust of Elizabeth S. Brodhead, dated February 28, 1943, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as said Co-trustee.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 4th day of May, 1943, before me appeared W. A. White and G. W. Fisher, to me personally

Exhibit No. 7—(Continued)

known, who, being by me duly sworn, did say that they are the Vice President and Asst. Vice Pres., respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Co-trustee with Mortimer J. Glueck under Deed of Trust of Elizabeth S. Brodhead, dated February 28, 1943, and that the seal affixed to said instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said W. A. White and G. W. Fisher acknowledged said instrument to be the free act and deed of said corporation as said Co-Trustee.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

AFFIDAVIT OF SPECIAL PARTNERSHIP
REQUIRED BY SECTION 6875, REVISED
LAWS OF HAWAII 1935

Territory of Hawaii,
City and County of Honolulu—ss:

Thomas Holmes Brodhead, being first duly
sworn, on oath doth depose and say:

That he is a resident of Honolulu, City and

Exhibit No. 7—(Continued)

County of Honolulu, Territory of Hawaii; that Mortimer J. Glueck and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead as Settlor, are a Special Partner in the partnership of T. H. Brodhead Co.; that as Special Partner said Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees as aforesaid, actually have paid into the partnership as a capital contribution the sum of \$40,000.00 in lawful money;

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ THOMAS HOLMES BRODHEAD

Subscribed and sworn to before me this 3rd day of May, 1943.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

Exhibit No. 7—(Continued)

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

AFFIDAVIT OF SPECIAL PARTNERSHIP
REQUIRED BY SECTION 6875, REVISED
LAWS OF HAWAII 1935

Territory of Hawaii,
City and County of Honolulu—ss:

Mortimer J. Glueck, being first duly sworn, on
oath doth depose and say:

That he is one of the Trustees under the Deed of
Trust dated February 28, 1943, made by Elizabeth
S. Brodhead as Settlor; that he and Bishop Trust
Company, Limited, a Hawaiian corporation, as
Trustees under said Deed of Trust and not in their
individual capacity, are a Special Partner in the
partnership of T. H. Brodhead Co.; that as Special
Partner they actually have paid into the partner-
ship as a capital contribution the sum of \$40,000.00
in lawful money.

And further affiant sayest not except that this
Affidavit is made in accordance with the require-
ments of the provisions of Section 6875, Revised
Laws of Hawaii 1935.

/s/ MORTIMER J. GLUECK

Exhibit No. 7—(Continued)

Subscribed and sworn to before me this 3rd day of May, 1943.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of T. H.
BRODHEAD CO.

AFFIDAVIT OF SPECIAL PARTNERSHIP
REQUIRED BY SECTION 6875, REVISED
LAWS OF HAWAII 1935

Territory of Hawaii,
City and County of Honolulu—ss:

W. A. White, being first duly sworn, on oath doth depose and say:

That he is Vice-President of Bishop Trust Company, Limited, a Hawaiian corporation, and as such is authorized to make this Affidavit on its behalf;

That said Bishop Trust Company, Limited, is one of the Trustees under the Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead as Settlor; that said Bishop Trust Company, Limited, a Hawaiian corporation, and Mortimer J. Glueck, as Trustees under said Deed of Trust and not in their individual capacity, is a Special Partner in the partnership of T. H. Brodhead Co.; that as Special Partner said Mortimer J. Glueck and

Exhibit No. 7—(Continued)

Bishop Trust Company, Limited, Trustees as aforesaid, actually have paid into the partnership as a capital contribution the sum of \$40,000.00 in lawful money.

And further affiant sayeth not except that this affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ W. A. WHITE

Subscribed and sworn to before me this 4th day of May, 1943.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My commission expires June 30, 1945.

EXHIBIT No. 8

AMENDMENT OF SPECIAL PARTNERSHIP
AGREEMENT

This Agreement, dated as of the close of business on the 28th day of February, 1947, made by and between Thomas Holmes Brodhead, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter referred to as "General Partner", and Mortimer J. Glueck, of Honolulu aforesaid, and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead as Settlor, hereinafter referred to as "Special Partner",

Exhibit No. 8—(Continued)

Witnesseth That:

Whereas said Thomas Holmes Brodhead, General Partner, and Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated September 30, 1942, made by Thomas Holmes Brodhead as Settlor, Special Partner, did form a Special Partnership known as "T. H. Brodhead Co.", by a special partnership agreement dated as of the 30th day of September, 1942; and,

Whereas said Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust of Thomas Holmes Brodhead dated September 30, 1942, did assign their interest in said special partnership known as "T. H. Brodhead Co." to Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust of Elizabeth S. Brodhead dated February 28, 1943, by Assignment dated the 28th day of February, 1943; and,

Whereas the parties hereto are desirous of changing the name of said partnership from "T. H. Brodhead Co." to "Ace Distributors",

Now, Therefore, This Indenture Further Witnesseth That:

That certain partnership agreement dated as of the 30th day of September, 1942, made by and between Thomas Holmes Brodhead, General Partner, and Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated September 30, 1942, made by Thomas Holmes Brodhead as Settlor, Special Partner, is hereby amended as follows:

Exhibit No. 8—(Continued)

Paragraph 2 thereof shall be and the same is hereby amended to read as follows:

“2. Name: The partnership shall be conducted and carried on under the firm name and style of ‘Ace Distributors’, and the place or places of business shall be at Honolulu aforesaid, and/or at such other place or places as the partners may from time to time determine.”

In Witness Whereof, the parties hereto have executed these presents as of the day and year first above written.

/s/ THOMAS HOLMES BRODHEAD,
General Partner.

[Seal] /s/ MORTIMER J. GLUECK and
BISHOP TRUST COMPANY,
LIMITED, Trustees as aforesaid

/s/ By E. BENNER, JR., Its Vice Pres.,

/s/ By G. W. FISHER, Its Vice Pres.
Special Partner

Territory of Hawaii,
City and County of Honolulu—ss:

On this 4th day of April, 1947, before me personally appeared Thomas Holmes Brodhead, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires 6-30-49.

Exhibit No. 8—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss:

On this 4th day of April, 1947, before me personally appeared Mortimer J. Glueck, Co-Trustee with Bishop Trust Company, Limited, a Hawaiian corporation, under Deed of Trust of Elizabeth S. Brodhead dated February 28, 1943, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as said Co-Trustee.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires 6-30-49.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 28th day of February, 1947, before me appeared E. Benner, Jr., and G. W. Fisher, to me personally known, who, being by me duly sworn, did say that they are the Vice-President and Vice-President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Co-Trustee with Mortimer J. Glueck under Deed of Trust of Elizabeth S. Brodhead dated February 28, 1943, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said E. Benner, Jr. and G.

Exhibit No. 8—(Continued)

W. Fisher acknowledged said instrument to be the free act and deed of said corporation as said Co-Trustee.

[Seal] MARTHA M. FOWLER,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires May 17, 1948.

EXHIBIT No. 9

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Special Partnership of Ace
Distributors (formerly T. H. Brodhead Co.).

CERTIFICATE OF CHANGE OF
SPECIAL PARTNERSHIP

The undersigned, a Special Partnership, hereby certifies in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935, as follows:

1. The name under which the partnership is to be conducted is "Ace Distributors", the name having been changed from T. H. Brodhead Co., as of the close of business on February 28, 1947.

2. The general nature of the business intended to be transacted is to buy, sell, import, export, trade and deal in goods, wares and merchandise of every kind or nature and to engage in and carry on the business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers, and such other business as may be necessary, suit-

Exhibit No. 9—(Continued)

able or proper to the accomplishment of the purposes or connected with or related thereto as the partners from time to time mutually may agree; and the place or places where the business is to be transacted is at 843 Kaahumanu Street, Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such other place or places as the partners from time to time shall determine.

3. The names of the partners and the residence of each are as follows:

Thomas Holmes Brodhead, General Partner, Honolulu, T. H.

Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust of Elizabeth S. Brodhead, dated February 28, 1943. Special Partner, Honolulu, T. H.

4. The amount of capital which the Special Partner has contributed to the partnership assets is \$40,000.00.

5. The change in the Special Partnership became effective on February 28, 1947. The Special Partnership will continue until September 30, 1952, and thereafter from year to year until terminated as provided in that certain Special Partnership Agreement dated September 30, 1942.

In witness whereof, the undersigned has caused this certificate to be executed this 27th day of February, 1947.

/s/ THOMAS HOLMES BRODHEAD

Exhibit No. 9—(Continued)

Territory of Hawaii,
City and County of Honolulu—ss:

On this 27th day of February, 1947, before me personally appeared Thomas Holmes Brodhead, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires 6-30-49.

EXHIBIT No. 10

In the Office of the Treasurer of the Territory
of Hawaii

In the Matter of the Incorporation of T. H. BROD-
HEAD CO., LTD.

AFFIDAVIT OF OFFICERS

Territory of Hawaii,
City and County of Honolulu—ss:

Thomas H. Brodhead, Theresa S. Beerman, and Elizabeth S. Brodhead, being first duly sworn, each for himself or herself on oath deposes and says:

That Thomas H. Brodhead is the President, Theresa S. Beerman is the Treasurer, and Elizabeth S. Brodhead is the Secretary of T. H. Brodhead Co., Ltd.; that the Articles of Association of said T. H. Brodhead Co., Ltd., have been adopted, executed and

Exhibit No. 10—(Continued)

authorized by the incorporators of said corporation, and the same are ordered to be filed in the Office of the Treasurer of the Territory of Hawaii;

That the number of authorized shares of capital stock of said corporation is ten thousand (10,000) shares of common stock of the par value of Ten Dollars (\$10.00) each, and the subscription price subscribed for by each subscriber is Ten Dollars (\$10.00) for each share of common stock subscribed by the subscribers;

That the amount of the capital stock of said corporation is One Hundred Thousand Dollars (\$100,000.00), with the privilege of subsequent increase or extension of said capital stock to an amount not exceeding One Million Dollars (\$1,000,000.00);

That the names of the subscribers of said capital stock, together with the number of shares subscribed by each and the amount of capital paid in by each subscriber are as follows:

Names of Subscribers	No. of Shares	Subscription Price	Amount Paid In
Thomas Holmes Brodhead.....	4,000	\$40,000.00	\$40,000.00
Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead as Settlor	4,000	40,000.00	40,000.00
	8,000	\$80,000.00	\$80,000.00

That Thomas Holmes Brodhead, General Partner, and Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead

Exhibit No. 10—(Continued)

as Settlor, Special Partner, are the owners of that certain business known as Ace Distributors (formerly T. H. Brodhead Co.); that certain property and assets owned by them and used in the operation of said business are to be conveyed to T. H. Brodhead Co., Ltd., as of the close of business on February 28, 1947, by form of conveyance and agreement annexed hereto and marked "Exhibit A" which will be supplemented by such additional instruments of further assurance and for the conveying of title to specific assets as may be advised by counsel in the premises to the end that the property and assets of said Ace Distributors shown on the balance sheet attached to the aforesaid conveyance and agreement shall be conveyed to said corporation.

That in and by said conveyance and agreement it is made to appear that T. H. Brodhead Co., Ltd., is to issue as fully paid up capital stock, shares of common stock in the amount of \$40,000.00 to Thomas Holmes Brodhead, and in the amount of \$40,000.00 to Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees as aforesaid, a total amount of \$80,000.00, which amount shall be equal to the book value of the property and assets conveyed, less certain liabilities in connection therewith, which T. H. Brodhead Co., Ltd., assumes and agrees to pay (which amount is hereinafter referred to as the "net book value"); Provided, However, that the partners of Ace Distributors shall pay to the corporation such additional amount in cash which when added to their respective shares of the net book value shall be equivalent to the par value of the stock subscribed by each of said partners, and so

Exhibit No. 10—(Continued)

that the aggregate of the net book value so paid in shall total \$80,000.00; that affiants are fully familiar with said assets and businesses and that said assets and businesses have a market value equal to the book value thereof.

That the sum of Eighty Thousand and No/100ths Dollars (\$80,000.00) in lawful money of the United States of America and in property as aforesaid has been paid in to said corporation as payment in full of subscriptions to the capital stock of said corporation having a total par value of \$80,000.00.

Subscribed and sworn to before me this 27th day of February, 1947.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires 6-30-49.

/s/ THOMAS H. BRODHEAD,
/s/ THERESA S. BEERMAN,
/s/ ELIZABETH S. BRODHEAD.

“EXHIBIT A”

BILL OF SALE

This Indenture, made as of the close of business on February 28, 1947, by and between Ace Distributors (formerly T. H. Brodhead Co.), a Special Partnership, duly registered in the Office of the Treasurer of the Territory of Hawaii, composed of Thomas Holmes Brodhead, General Partner, and Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead as

Exhibit No. 10—(Continued)

Settlor, Special Partner, hereinafter called the "Seller", and T. H. Brodhead Co., Ltd., a Hawaiian corporation, hereinafter called the "Purchaser",

Witnesseth That:

Whereas the Seller is the owner of that certain business conducted under the name of Ace Distributors (formerly T. H. Brodhead Co.); and,

Whereas the members of the Seller have subscribed for eight thousand (8,000) shares of the capital stock of the Purchaser and have agreed to pay in full for said shares the total par value thereof, or Eighty Thousand and No/100ths Dollars (\$80,000.00) by conveying to the Purchaser certain assets and property owned by the Seller and used in the business now carried on by it, and paying cash in addition, if necessary, which together have a market value of \$80,000.00, upon the promises, terms, agreements, conditions and provisos as are hereinafter more fully set forth;

Now, therefore, this conveyance and agreement further witnesseth that:

The Seller, for and in consideration of the issuance by the Purchaser of 8,000 fully paid shares of its, the Purchaser's capital stock, having a par value of \$80,000.00, to the members of the Seller, as follows:

Name	Number of Shares
Thomas Holmes Brodhead	4,000
Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead as Settlor	4,000

Exhibit No. 10—(Continued)

does hereby grant, bargain, sell, assign, transfer, set over, confirm and deliver unto the Purchaser and its successors and assigns forever:

All those certain rights, property, assets and privileges owned by the Seller and used in the business known as "Ace Distributors" (formerly "T. H. Brodhead Co."), as shown on the balance sheet prepared by Cameron & Johnstone, dated as of the 28th day of February, 1947, a copy of which is attached hereto, incorporated herein and made a part hereof for all purposes, and subject to the liabilities, obligations and indebtedness shown on said balance sheet.

To have and to hold the same, together with all improvements, rights, easements, privileges, rents, issues and profits, and appurtenances to the same or any part thereof belonging or appertaining or held and enjoyed therewith, unto the Purchaser, its successors and assigns, absolutely and forever, or in fee simple, as the case may be.

And the Purchaser, in consideration of the foregoing, does hereby covenant and agree that it will, and by these presents does assume the liabilities, obligations and indebtedness of the Seller which are shown on the aforesaid balance sheet and does covenant and agree to pay and discharge the same as fully and completely as through the said liabilities, obligations and indebtedness had been incurred directly by said Purchaser, and to indemnify and hold harmless the said Seller from all liability, expense or obligations upon the same or arising in connection therewith;

And for the consideration aforesaid, the Seller,

Exhibit No. 10—(Continued)

for itself and its successors and assigns, does hereby irrevocably appoint the Purchaser, its successors and assigns, its true and lawful attorney, in its name, place and stead, to ask, demand, sue for and recover any and all moneys, assets or other property conveyed and transferred hereby or intended so to be and the rights and benefits therefor, and does further covenant that it, the Seller, will at any time at the request of the Purchaser, make, do, execute and deliver all such receipts, powers of attorney and further instrument or instruments for the better and more effectual vesting and confirming of all right and interest, property, claims and demands hereinabove conveyed and assigned, or intended so to be, as the Purchaser reasonably may require;

And, as consideration for the conveyance and promises as aforesaid, the Purchaser for itself and its successors and assigns hereby covenants, promises and agrees to and with the Seller, and the members thereof, and their respective heirs, executors, administrators, successors in trust and assigns, to issue to and in the name of and deliver to the members of the Seller, certificates for fully paid shares of the common capital stock of the Purchaser as follows:

Name	Number of Shares
Thomas Holmes Brodhead	4,000
Mortimer J. Glueck and Bishop Trust Company, Limited, Trustees under Deed of Trust dated February 28, 1943, made by Elizabeth S. Brodhead as Settlor	4,000

Exhibit No. 10—(Continued)

the total of said shares to be equal to the book value of the assets and businesses so conveyed, less all of the liabilities thereof or pertaining thereto, or in connection therewith, which the Purchaser has hereinbefore assumed and promises to pay (which amount is hereinafter referred to as the "net book value"); Provided, However, that the Seller and the members thereof shall pay to the Purchaser such additional amount in cash which when added to their respective shares of the net book value shall be equivalent to the par value of the stock subscribed by each of said members and so that the aggregate of the net book value and the cash so paid in shall total \$80,000.00.

In Witness Whereof, the parties hereto have executed these presents as of the day and year first above written.

ACE DISTRIBUTORS

/s/ By THOMAS HOLMES BRODHEAD,
General Partner.
Seller,

T. H. BRODHEAD CO., LTD.

/s/ By THOS. H. BRODHEAD,
Its President.

/s/ By THERESA S. BEERMAN,
Its Treasurer.

Exhibit No. 10—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss:

On this 27th day of February, 1947, before me appeared Thomas Holmes Brodhead, to me personally known, who, being by me duly sworn, did say that he is the General Partner of Ace Distributors, a special partnership organized and doing business in the Territory of Hawaii, and as such General Partner has authority to execute the said instrument on behalf of said special partnership and the said Thomas Holmes Brodhead acknowledged said instrument to be the free act and deed of said special partnership.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires 6-30-49.

Territory of Hawaii,

City and County of Honolulu—ss:

On this 27th day of February, 1947, before me personally appeared Thomas Holmes Brodhead and Theresa S. Beerman, to me personally known, who, being by me duly sworn, did say that they are the President and Treasurer, respectively, of T. H. Brodhead Co., Ltd., a Hawaiian corporation; that the seal affixed to the foregoing instrument is the

Exhibit No. 10—(Continued)

corporate seal of said corporation; and that the foregoing instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said Thomas Holmes Brodhead and Theresa S. Beerman acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of
Hawaii. My Commission expires 6-30-49.

THOMAS H. BRODHEAD TRUST

Inventory of Assets
September 30, 1950

<u>Cash</u>				\$ 2,109.48
<u>Stocks</u>				
90	Shares	American Chicle Co.	\$ 3,852.50	
205	"	American Factors, Ltd.	5,081.75	
120	"	Columbian Carbon Corp.	3,751.47	
111	"	Standard Oil of California	3,698.80	
75	"	F. E. Woolworth Co.	3,317.50	
139	"	Eastman Kodak Co.	4,236.26	
120	"	Pittsburg Plate Glass	3,574.32	
200	"	Hawaiian Electric Co., 4 $\frac{1}{2}$ Pfd.	3,960.50	
110	"	Consolidated Edison Co. of New York	3,661.61	
140	"	Union Oil	3,551.31	
82	"	Continental Insurance Co.	3,324.17	
400	"	Mutual Telephone Co., Pfd.	4,082.60	
100	"	Southern California Edison	3,492.00	
50	"	Bank of Hawaii	<u>1,871.75</u>	51,456.54
<u>Bonds</u>				
		U. S. Savings Bonds - Series G	10,000.00	
		U. S. Treasury Bonds - 2 $\frac{1}{2}$ %	<u>13,452.95</u>	23,452.95
<u>Savings and Loan Certificates</u>				
		First Federal Savings and Loan	4,900.00	
		Home Mutual Savings & Loan	<u>5,000.00</u>	<u>9,900.00</u>
				<u>\$86,918.97</u>

Schedule of Income and Expenses
February 28, 1943 to February 28, 1943 Inclusive

5 Month Period
Ending February 28,
1943

	Calendar Year		Fiscal Year Ending September 30,		Total
	1944	1945	1947	1948	
Income					
Distributive share of profits and (losses) of T. H. Brodhead Co. for fiscal year ending February 28	\$40,537.19	\$65,202.78	\$ 379.23		\$1,882.80
Distributive share of profits and (losses) of Ace Distributors for fiscal year ending February 28				\$ (2,814.86)	\$ (67.08)
Adjustment of gross income tax of T. H. Brodhead Co., for fiscal year ended February 28, 1944		1,205.18			58.68
Interest					24.50
Dividends					\$1,965.98
	<u>\$40,537.19</u>	<u>\$66,407.96</u>	<u>\$ 379.23</u>	<u>\$ (2,814.88)</u>	<u>\$177,310.76</u>
Expenses					
Interest	\$ 1,500.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,410.75
Trustee fees		1,647.93	300.00	300.00	\$ 300.00
Tax service fee	15.00	25.00	25.00	15.00	15.00
Federal income taxes		19,912.09	21,279.33	7,093.09	46.31
Territorial income taxes		1,149.83	350.92		
Notary fees				.50	.50
	<u>\$ 1,515.00</u>	<u>\$22,586.92</u>	<u>\$22,955.25</u>	<u>\$ 8,408.59</u>	<u>\$ 315.00</u>
	<u>\$39,022.19</u>	<u>\$43,821.04</u>	<u>\$ (22,576.02)</u>	<u>\$ (12,223.47)</u>	<u>\$1,650.98</u>
Net income					
					<u>\$101,657.73</u>
					<u>\$ 75,673.03</u>
					<u>10,000.00</u>
					<u>\$ 85,673.03</u>

Gift by Thomas H. Brodhead at February 28, 1943

Trust balance - Inventory attached



Schedule of Receipts of Distributive Share of Income
From T. H. Brodhead Co. and Ace Distributors

5. Month Period
Ending February 2
1951

\$1,682.80

Fiscal Year Ending September 30
1947 1948 1949 1950

Calendar Year
1944 1945 1946

\$40,537.19 \$66,407.96 \$57,847.70 \$ (67.08)
\$ (3,814.88) \$14,054.66 \$ (67.08)

Income
Distributive share of income of T. H. Brodhead Co.
Distributive share of income of Ace Distributors

Payments made

- April 19, 1944
- June 9, 1944
- February 9, 1945
- February 15, 1945
- June 8, 1945
- June 11, 1945
- September 10, 1945
- November 26, 1945
- December 17, 1945
- February 20, 1946
- March 5, 1946
- June 13, 1946
- September 10, 1946
- December 7, 1946
- March 8, 1947
- June 9, 1947
- September 15, 1947
- December 12, 1947
- February 28, 1948
- February 28, 1948 (loss for fiscal year ending February 28, 1948)
- September 23, 1948
- February 28, 1949
- July 25, 1949
- September 9, 1949
- September 13, 1949
- February 28, 1950
- February 28, 1950 (loss for fiscal year ending February 28, 1950)
- February 28, 1950 (withdrawal of assets for investment in T. H. Brodhead Co., Ltd., at February 28, 1948)
- September 6, 1950

1,500.00
420.37
5,265.49
1,500.00
2,654.57
5,000.00
5,265.49
5,000.00
5,265.45
1,253.47
4,112.35

7,677.85
10,210.76
10,210.73
7,468.07
7,118.11
7,093.11
6,418.57

(3,814.88)

674.54
1,299.98
3,814.88
315.50
1,315.00
17,500.00
2,500.00
410.75
361.81
67.08

(67.08)

1,032.61
4,022.05

379.23

\$66,407.96 \$27,847.70

\$40,537.19 \$ (67.08)

Balance

ELIZABETH S. BRODHEAD TRUST

Inventory of Assets
February 28, 1951

<u>Cash</u>				\$ 3,858.
<u>Partnership Equity in Ace Distributors</u>				2,904.
<u>Accounts Receivable</u>				
Received as partial liquidation of Ace Distributors				17,000.
<u>Stocks</u>				
4,000	Shares	T. H. Brodhead Co., Ltd.	\$40,000.00	
100	"	Hawaiian Electric "E", 5% Pfd.	1,934.50	
50	"	Continental Insurance Co.	3,946.55	
30	"	Insurance Company of North America	4,050.63	
40	"	Texas Company	<u>3,477.60</u>	53,409.
<u>First Federal Savings and Loan Association of Hawaii</u>				<u>8,500.</u>
				<u>\$85,673.</u>

Schedule of Federal Fiduciary Tax Return Filed

	Fiscal Year Ending September 30,							
	1943	1944	1945	1946	1947	1948	1949	1950
Income								
Partnership and other fiduciaries								
Interest	\$34,319.30							
Dividends		\$2,000.00	\$2,250.00	\$2,003.47	\$1,787.36	\$1,450.00	\$1,861.70	\$ 704.50
Gain or (loss) on sale of capital assets			892.50	1,264.11	1,952.94	2,128.94	2,543.19	2,860.26
						(7.52)		
Total income	<u>\$34,319.30</u>	<u>\$2,000.00</u>	<u>\$3,142.50</u>	<u>\$3,267.58</u>	<u>\$3,740.30</u>	<u>\$2,571.41</u>	<u>\$4,404.89</u>	<u>\$3,565.26</u>
Deductions								
Trustee fees	\$ 366.81	\$ 185.00	\$ 175.19	\$ 316.26	\$ 297.35	\$ 305.10	\$ 342.18	\$ 280.70
Contributions	10.14							
Bank charges		.05	.20	.15	.05			.05
Taxes			29.65	43.34	33.45	61.12	52.50	77.01
Tax service fee							25.00	35.00
Postage								.26
Total deductions	<u>\$ 376.95</u>	<u>\$ 185.05</u>	<u>\$ 205.04</u>	<u>\$ 359.75</u>	<u>\$ 330.85</u>	<u>\$ 366.22</u>	<u>\$ 419.68</u>	<u>\$ 393.02</u>
Balance	<u>\$33,942.45</u>	<u>\$1,814.95</u>	<u>\$2,937.46</u>	<u>\$2,907.83</u>	<u>\$3,409.45</u>	<u>\$3,205.19</u>	<u>\$3,985.21</u>	<u>\$3,192.24</u>
Amount distributed*	<u>23,924.45</u>							
Net income taxable to fiduciary	<u>None</u>	<u>\$1,814.95</u>	<u>\$2,937.46</u>	<u>\$2,907.83</u>	<u>\$3,409.45</u>	<u>\$3,205.19</u>	<u>\$3,985.21</u>	<u>\$3,192.24</u>
Tax paid	<u>None</u>	<u>\$ 394.44</u>	<u>\$ 669.26</u>	<u>\$ 577.35</u>	<u>\$ 653.68</u>	<u>\$ 553.66</u>	<u>\$ 696.98</u>	<u>\$ 513.48</u>

* Represents amount not actually distributed, but included as income of petitioner, Thomas H. Brouhead, prior to passage of Revenue Act of 1943.

Schedule of Federal Fiduciary Tax Returns Filed

	Calendar Year		Fiscal Year Ending September 30. (Note)	
	1944	1945	1948	1949
<u>Income</u>				
Partnerships and other fiduciaries				
Gain from sale or exchange of capital assets	\$40,895.44	\$67,914.53	\$976.73	\$(7,978.48)
				10,088.95
				131.25
Total income	None	\$67,914.53	\$976.73	\$(7,978.48)
				2,110.47
				\$(197.40)
<u>Deductions</u>				
Interest	\$1,500.00	\$1,500.00	\$1,000.00	\$1,410.75
Trustee commissions	420.37	689.08	615.00	300.00
Contributions	302.72	2,394.48	18.50	
Taxes			58.50	5.75
Tax service fee			350.92	15.00
Notary fees			25.00	
				.50
Total deductions	\$2,223.09	\$4,583.56	\$1,634.42	\$1,731.50
				\$315.50
<u>Net income taxable to fiduciary</u>	None	\$63,330.97	\$(457.69)	\$(7,121.84)
				378.97
				\$(512.90)
<u>Tax paid</u>	None	\$19,912.09	None	None
				46.31

Note: Permitted to change basis of filing Federal Income Tax Returns from calendar to fiscal year granted per letter of September 17, 1947 from Commissioner of Internal Revenue.

[Title of Tax Court and Cause No. 29392.]

REPLY

Come now, Thomas H. Brodhead and Elizabeth S. Brodhead, petitioners, above named, by their attorneys, Milton Cades and Urban E. Wild, and for answer to the allegations of facts contained in respondent's Amendment to Answer heretofore filed herein, admit, deny and allege as follows:

VI.

(1) Admit the allegations contained in paragraph VI (1) of the Amendment to Answer;

(2) Admit the allegations contained in paragraph VI (2) of the Amendment to Answer;

(3) Deny the allegations contained in paragraph VI (3) of the Amendment to Answer;

(4) Admit the allegations contained in paragraph VI (4) of the Amendment to Answer.

/s/ MILTON CADES,

/s/ URBAN E. WILD,

Attorneys for Petitioners.

Of Counsel:

SMITH, WILD, BEEBE & CADES.

[Endorsed]: T. C. U. S. Filed June 25, 1951.

[Title of Tax Court and Causes Nos. 29391-2.]

FINDINGS OF FACT AND OPINION

A trust created by the husband-petitioner for minor children, only one of whom was then in being, became a special partner in a partnership in which the petitioner was the general partner. The next year, when the petitioners had two children, the wife-petitioner created a trust for minor children, which trust purchased the interest of the first trust in the partnership and became a special partner. The trusts' contributions to the partnership originated with the husband. The trusts were long-term trusts, irrevocable, and the trustees were independent of the Settlers.

Held, that the trusts were bona fide partners in the partnership and their distributive shares of partnership income were not income of the settlers.

Held, further, that the settlers did not retain sufficient control over, or interest in, the trusts to make the trust income taxable to them.

Milton Cades, Esq., and Urban E. Wild, Esq., for the petitioners.

Charles W. Myquist, Esq., for the respondent.

The respondent determined deficiencies in income tax for the years and in the amounts as follows:

1943—\$42,280.89	1945—\$ 48,666.11
1944—\$79,944.90	1948—\$ 1,177.22

The principal cause of the deficiencies is the inclusion in income of the petitioners of income of successive trusts created by the petitioners—the first

by the husband and the second by the wife—each of which trusts became a partner with the husband in a business which the husband had theretofore operated. The propriety of such inclusion is the main issue. If that issue is decided adversely to the petitioners, there is a further issue as to whether the statute of limitations has run against the year 1943.

Findings of Fact

The petitioners at all times material to these proceedings were husband and wife and residents of the Territory of Hawaii. They filed their income tax returns with the Collector of Internal Revenue for the District of Hawaii.

The petitioners have three children born December 29, 1939, November 19, 1942, and May 1, 1945.

In and prior to 1942 the petitioner Thomas H. Brodhead was engaged as an individual in operating a wholesale merchandise business in Honolulu. The merchandise handled consisted of a great variety of articles which were sold to post exchanges and ships' service stores and included drug items, razor blades, dungarees, shoes, underwear, work shirts, shower clogs, pocket knives, candy, gum, and miscellaneous items.

The petitioner Thomas H. Brodhead came from a family of short-lived people on his father's side and he was quite concerned about the length of his own life. Conditions in Hawaii in 1942 were not conducive to a feeling of long life. He was determined to make some provision for his children so that they would have a better education than he

had. In September, 1942, the petitioners had one child, and were expecting the birth of another. Thomas H. Brodhead's business grew rapidly after the start of World War II, and he wanted some means of having it carried on for the benefit of his children in the event of his death. Also, because of the size to which the business had grown in 1942 he felt that he needed someone to help him with it.

Mortimer J. Glueck had been a personal and business acquaintance of the petitioner Thomas H. Brodhead for a number of years, had kept his books on a part-time basis, and had advised him generally. Glueck had a commission business, and in 1942 he was getting too busy with it to be able to assist petitioner Brodhead and advised him to get other assistance. Glueck and Brodhead had many discussions as to what provision the latter should make for his children.

Bishop Trust Company, Limited, in and prior to 1942 conducted a trust company business in the Territory of Hawaii. It is operated as a professional fiduciary, with side issues such as insurance, real estate sales, and brokerage. Its main business is the administration of estates, trusts, guardianships and agency accounts. The normal trust or estate handled by the trust company consists of securities or interests in real estate. However, it has at times administered proprietorships and the controlling shares of incorporated businesses. In the administration of such properties it has operated various businesses including a structural steel mill, a department store, dairies, ranches, a bottling company, and an automobile agency.

In 1942 Glueck and Brodhead sought the advice of counsel, and it was agreed that a trust should be created for the benefit of the petitioners' children and that the trust should become a partner with Brodhead in his business. Brodhead asked Glueck to be one of the trustees so that with his knowledge of the business he could carry it on in the event of Brodhead's death. Brodhead also wanted Bishop Trust Company, Limited, as a trustee for the general assistance and advice that it could give.

On September 30, 1942, the petitioner Thomas H. Brodhead created the Thomas H. Brodhead Trust, naming Mortimer J. Glueck and Bishop Trust Company, Limited, as trustees. Corpus of the trust was stated to be \$40,000. It consisted of a one-half interest in the petitioner's business which at that time had a net worth of \$80,000. Under the trust agreement, the \$40,000 corpus was to be contributed to the capital of a special partnership to be organized concurrently for a 50 per cent interest therein.

The trustees were required to accumulate all trust income during the continuance of the trust, but they had discretion to pay out net income for the maintenance, support and education of the children of the settlor, or if income was insufficient they could use corpus. All income not used for such purposes was to be accumulated and added to corpus. The trustees were authorized to pay to any child of the settlor any time after attaining age 21, as they deemed proper, such portion of corpus and ac-

cumulated income as constituted one share, such share to be determined by considering the trust estate to be divided into as many equal shares as there should be children then surviving or lineal descendants of any deceased child.

The trust was to continue until 20 years after the death of the settlor. The trust property and accumulated income were then to be distributed to the surviving children of the settlor (other than those to whom the distribution of a share may have previously been made) and the issue of any deceased children. If there were no children or issue then surviving, distribution was to be made to those persons, other than the settlor, who would be the heirs-at-law of the last survivor of the children of the settlor.

The trustees could terminate the trust at any time after the termination of the special partnership, in which event distribution was to be made to the settlor's children and issue of any deceased children.

The trustees were given broad powers to invest and reinvest and manage the trust property, but during the life of the settlor they were required to obtain his consent to all investments. After the settlor's death the trustees were to be restricted in making investments to those which trustees are permitted by law to make. However, they could in any event make advances or loans to the special partnership without liability for any loss resulting therefrom.

The settlor reserved the right to transfer addi-

tional property to the trust. The trustees were required to furnish annual statements of account to the beneficiaries. The corporate trustee was given the custody of all money or securities in the trust.

The trust was declared to be irrevocable by the settlor. It was provided that in no event should any of the trust property or income be paid to or inure to the benefit of the settlor.

Any alteration, amendment, cancellation or revocation of any provisions of the trust required the written consent of the trustees and all of the beneficiaries.

A special partnership was formed by a document dated as of September 30, 1942. The petitioner Thomas H. Brodhead was referred to therein and signed the agreement as "General Partner". The trustees of the above described trust are referred to and signed as "Special Partner." The partnership adopted the name of T. H. Brodhead Co. Its purpose was to acquire the assets and carry on the business theretofore conducted by the petitioner Thomas H. Brodhead. Other purposes are stated including the carrying on of any business that may lawfully be carried on by a partnership.

The initial capital of the partnership was \$80,000 which was the book value of the net assets that it acquired. It was agreed that \$40,000 was the capital contribution of each of the partners and that each had a 50 per cent interest.

The general partner who was actively engaged in the business was to receive compensation for his services which was to be charged as an expense in

computing partnership profits. The remaining profit or loss, was to be divided in proportion to the capital contributions. Profits attributable to each partner's interest could be withdrawn from time to time as the partners deemed advisable.

The trustees had all the powers, rights and duties of a special partner as prescribed by designated sections of the Special Partnership Law of the Territory of Hawaii, and were not liable for partnership debts beyond the extent prescribed by law.

Only the general partner had authority to transact the business of the partnership, or incur obligations. He was to establish the policy of the partnership. The special partner could at all times investigate the partnership affairs and advise the general partner as to its management.

The general partner could not assign or mortgage any part of his interest. The special partner could assign its interest with the consent of the general partner.

Proper partnership books and records were to be kept and each partner was to have full access to them. The books were to be audited at least once a year, and a copy of the auditor's report was to be delivered to each partner. Annual accounts were to be taken, showing the capital of the partnership and the interest of each partner therein and copies were to be furnished each partner.

The partnership could be terminated by the general partner on two months' written notice. On termination, debts were to be paid, and any balance remaining was to be applied first to advance ac-

counts of the partners, then to capital, then between the partners in the manner provided for division of profits. If the balance after payment of debts was insufficient to pay in full the advance accounts of all partners, the special partner was to be paid first.

In the event of the death of the general partner, his representative had the option of succeeding to or carrying on his interest in the business as a general partner.

The partnership was to continue for a ten-year period and thereafter from year to year until terminated by either partner giving three months' notice.

By bill of sale dated as of the close of business on September 30, 1942, the petitioner Thomas H. Brodhead conveyed to the special partnership the rights, property, assets and privileges owned by him and used in his merchandising business. The partnership agreed in the bill of sale to assume the liabilities disclosed by the balance sheet attached thereto. The balance sheet listed assets in the amount of \$178,598.73, current liabilities in the amount of \$98,598.73, and capital in the amount of \$80,000. Among the assets listed were cash, \$21,532.34; accounts receivable, \$64,667.35; and merchandise inventory, \$27,310.44.

The required documents concerning the organization of the special partnership were duly filed and publication was made in a Honolulu paper.

Early in 1943, the petitioner Thomas H. Brodhead was advised by his attorney that under a re-

cent court decision he might be subject to Federal income tax on all of the income of the Thomas H. Brodhead trust without being able to get any of the trust income to use to pay the tax. In that situation, it was possible that he might have been unable to pay the tax. He was advised by counsel that a new trust could be created, omitting the features that might make the income of the first trust taxable to him, to acquire the interest of the first trust in the partnership.

Following discussions among the petitioners, the trustees of the Thomas H. Brodhead trust, and counsel, the petitioner Elizabeth S. Brodhead on February 28, 1943, created the Elizabeth S. Brodhead trust. The trustees of that trust were the same as those of Thomas H. Brodhead trust. At that time, Thomas H. Brodhead gave his wife \$10,000 which she paid in to the trust created by her. Both petitioners filed federal gift tax returns in which they reported the gifts of \$10,000 made by them.

The provisions of the Elizabeth S. Brodhead trust were substantially the same as those of the Thomas H. Brodhead trust. The principal differences were that the wife's trust did not give discretion to the trustees to distribute income for maintenance, support or education of the beneficiaries during minority, and it was to terminate when the youngest child attained the age of 33 years.

On February 28, 1943, the Elizabeth S. Brodhead trust purchased from the Thomas H. Brodhead trust its 50 per cent interest in the special partnership. That interest was duly assigned to the Eliza-

Elizabeth S. Brodhead trust by an instrument dated February 28, 1943, in which Thomas H. Brodhead, as general partner, gave his consent to the assignment. The Elizabeth S. Brodhead trust paid the Thomas H. Brodhead trust the sum of \$10,000, and gave its note for the unpaid balance of the purchase price of the 50 per cent interest in the amount of \$30,000 with interest at 5 per cent. Interest was paid periodically, and the principal of the note was paid off by payments made in 1945 and 1949. The legally required certificate of change of the special partnership and affidavits were duly filed, and notice was duly published.

An independent firm of auditors was employed by the partnership to make audits of the partnership business and to prepare annual statements.

The petitioner Thomas H. Brodhead received compensation for his services to the partnership for the periods and in the amounts as follows:

Period or Year	Amount
Oct. 1, 1942, to Feb. 28, 1943.....	\$ 6,250.00
Fiscal year ended Feb. 28, 1944.....	15,000.00
Fiscal year ended Feb. 28, 1945.....	18,000.00
Fiscal year ended Feb. 28, 1946.....	18,000.00
Fiscal year ended Feb. 28, 1947.....	18,000.00

As of the close of business on February 28, 1947, the name of the special partnership was changed from T. H. Brodhead Co. to Ace Distributors. The instrument changing the name was executed by Thomas H. Brodhead as general partner and by Mortimer J. Glueck and Bishop Trust Company,

Limited, trustees under the Elizabeth S. Brodhead trust as special partner. The necessary documents to effect the change were duly filed and publication was duly made.

As of the close of business on February 28, 1947, the partnership, under its new name of Ace Distributors, assigned to T. H. Brodhead Co., Ltd., an Hawaiian corporation, certain rights, property and assets used in its business, subject to balance sheet liabilities, which properties had a net book value of \$80,000. In payment therefor the corporation issued 4,000 shares of its stock to the general partner and an equal number to the special partner. The necessary documents in connection with the organization of the corporation and the issuance of its stock were duly filed.

During the period of operations of the special partnership, the general partner discussed the problems of the business frequently with the trustees of the two trusts. Whenever a financial report on the business was issued he furnished copies to the trustees. The general partner conferred with the corporate trustee as to investment of the funds of the first trust. In one instance it accepted his suggestion as to an investment and in another instance it refused to do so. He discussed with the trustees possible means of financing an expansion of the partnership business which in the war years was increasing in volume.

The partnership T. H. Brodhead Co. filed partnership returns on an accrual and fiscal year basis ending on the 28th of February. Its first return on

that basis was filed for the fiscal year ended February 28, 1943. Returns were filed on that basis for each of the subsequent fiscal years 1944 through 1949.

The Thomas H. Brodhead trust and the Elizabeth S. Brodhead trust filed Federal fiduciary returns each year and duly paid the tax shown to be due thereon. None of the funds of the trusts has ever been paid out to the beneficiaries thereof. Out of the income of the trusts there have been paid the expenses of each, such as trustee fees, tax service fees, and the Federal and territorial income taxes.

On September 30, 1950, the assets of the Thomas H. Brodhead trust amounted to a total of \$86,918.97 which consisted of cash in the amount of \$2,109.48 and investments in stocks, bonds, and savings and loan certificates with a cost of \$84,809.49.

On February 28, 1951, the assets of the Elizabeth S. Brodhead trust amounted to a total of \$85,673.03, which was made up of cash, \$3,858.90; partnership equity in Ace Distributors, \$2,904.85; accounts receivable received in partial liquidation of Ace Distributors, \$17,000; 4,000 shares of stock in T. H. Brodhead Co., Ltd., \$40,000; other stocks having a cost of \$13,409.28; savings and loan certificates with a cost of \$8,500.

The joint Federal income tax return of the petitioners for the year 1943 was filed with the Collector on or about March 20, 1944. The gross income shown thereon was in the amount of \$74,888.57. On or about January 18, 1949, the petitioners and

the respondent executed a consent extending to June 30, 1950, the period within which an income tax may be assessed or a deficiency notice mailed to the petitioner for the year 1943.

The deficiency notices in these proceedings were mailed to the petitioners on February 7, 1950.

The petitioner Thomas H. Brodhead and the trustees of the Thomas H. Brodhead trust and of the Elizabeth S. Brodhead trust really and truly intended to, and did, join together for the purpose of carrying on the business of T. H. Brodhead Co. and sharing in its profits and losses.

The two trusts were bona fide trusts for the benefit of the children of the settlors, and the petitioners had no substantial control over, or interest in, the corpus or income thereof.

Opinion

Arundell, Judge: The respondent has determined, as set forth in the notices of deficiency, that "the T. H. Brodhead Company, (Ace Distributors in 1948) an alleged partnership * * * is not a valid partnership for Federal income tax purposes" with the consequence that all of the income from such partnership is taxable to the petitioners. This determination is assigned as error.

An alleged error concerning a deduction for legal fees for the year 1943 has been abandoned by the petitioners.

While the pleadings are directed to the question

of the validity of the special partnership, the parties argue not only that question but also that of whether the income reported by the trusts is taxable to the petitioners under the rationale of *Helvering v. Clifford*, 309 U.S. 331.

The partnership question. It is our opinion, and we so hold, that the successive trusts were bona fide partners in the partnership of T. H. Brodhead Co. (the name of which was changed in 1947 to Ace Distributors).

The ultimate factual question in the tax treatment of family arrangements in the form of partnerships is "whether, considering all the facts * * * the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." *Commissioner v. Culbertson*, 337 U.S. 733. The evidence satisfies us that in forming the partnership the parties were acting in good faith and with a business purpose. There is no doubt that Thomas H. Brodhead was genuinely concerned about the possibility of his death, which event would have affected his one-man business. The welfare of his family was tied in with the degree of success of the business. In order to insure, as far as possible, that neither would suffer in the event of his untimely death, the partnership was formed. There was a business purpose in bringing in Glueck and the trust company as a special partner. Glueck had been Brodhead's business advisor, and an employee in the business. In those capacities he had a good grasp of the various aspects of the

business and was in a position to carry it on if that became necessary. Brodhead wanted the trust company as a participant because of its broad experience in the management of businesses and for the advice that it could give in the operation of a rapidly expanding business. While a special partner cannot transact the business of the partnership, it may at all times investigate partnership affairs and advise the partners as to management.¹ The parties did join together in the present conduct of the enterprise theretofore conducted by Brodhead alone. Brodhead irrevocably parted with a 50 per cent interest in the net assets of the business, and with 50 per cent of the profits of the business after compensation for his services.

Capital was a material income-producing factor in the business of the partnership. The contribution made by each of the trusts was capital—as distinguished from services. The fact that it was gift capital which originated with the petitioners does not preclude recognition of it as a genuine capital contribution where the facts indicate “that the amount thus contributed and the income therefrom should be considered the property of the donee for tax, as well as general law, purposes. * * * Whether he [the donee] is free to, and does, enjoy the fruits of the partnership is strongly indicative of the

¹ Revised Laws of Hawaii, 1935, as amended, ch. 225, section 6881.

reality of his participation in the enterprise.” *Commissioner v. Culbertson*, *supra*; *Theodore D. Stern*, 15 T.C. 521.

The respondent contends against the recognition of the trusts as partners because of the settlors' control over corpus and income. Corpus was required to be paid into the business of which Brodhead was the manager. Distributable income was what was left after Brodhead took out his salary. We do not see wherein these factors should serve to operate against recognition of the trusts as partners, at least in the absence of any abuse by Brodhead of his discretion in his handling of corpus or income. Trusts normally provide for some degree of control over corpus and/or income by someone other than the beneficiary. If they did not, the transfer would result in an outright gift rather than the creation of a trust.² The question of the tax effect of retained control is one of degree, as is true of many questions in the law. “‘Drawing the line’ is a recurrent difficulty in those fields of the law where differences in degree produce ultimate differences in kind”. *Harrison vs. Schaffner*, 312 U. S. 579. The question of where to draw the line as to the permissible degree of control which will shift tax liability is of particular concern where income is produced by property rather than by services. In such cases, the tax liability attaches to

² In the case of an inter vivos trust where the settlor retains power to control the trustee in some respects in the administration of the trust, the settlor is ordinarily under a fiduciary duty to the beneficiary in respect to the exercise of the power. *Scott, The Law of Trusts*, section 185.

ownership. *Poe vs. Seaborn*, 282 U. S. 101, *Hoeper vs. Tax Commission*, 284 U. S. 206. A beneficiary of a trust may assign a share of the trust income to another for life without retention of any form of control, and such assignment is treated as a transfer in praesenti of a life interest in the trust corpus with income taxable to the donee. *Blair vs. Commissioner*, 300 U. S. 5. One step removed from such complete assignment is the assignment of trust income for a limited period. In such a case, the gift of the income "for the period of a day, a month or a year involves no such substantial disposition of the trust property as to camouflage the reality" that the assignor continues to enjoy the benefit of the trust income. *Harrison vs. Schaffner*, *supra*. Still further removed are situations like those involved in *Helvering vs. Clifford*, *supra*, where the owner of property places it in trust for a relatively short term, with himself as trustee, retains broad powers of management and over distribution of income, with a reversion to the grantor. A gift in trust for the benefit of another, but with reserved power to modify or revoke, results in taxation of the trust income to the settlor. This is on the ground that "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid". *Corliss vs. Bowers*, 281 U. S. 376.

The attribution of income from property to the owner of the property was emphasized by the Tax Committees of the House of Representatives and of the Senate in their consideration of the family

partnership provisions that became section 340 of the Revenue Act of 1951³. It was the expressed view of the committees that partnership income, where capital is a material income-producing factor, should be taxed to the partners if they were the real owners of their interests regardless of how the interests may have been acquired.

While purported intra-family gifts may be mere shams, not every restriction upon unfettered control is to be regarded as indicative of sham in the transaction. Lack of true ownership in the transferee is not necessarily indicated by powers retained by the transferor as a managing partner or in any other fiduciary capacity when considered in the light of all of the circumstances.⁴

³ H. Rep. No. 586, 82nd Cong., 1st sess.; 1951 I.R.B. No. 23, p. 31, at p. 54. The Senate Finance Committee issued a report in the same language as the Ways and Means Committee Report. See S. Rep. No. 781, 82nd Cong., 1st sess.; 1951 I.R.B. No. 24, p. 40, at p. 67.

⁴ "Not every restriction upon the complete and unfettered control by the donee of the property donated will be indicative of sham in the transaction. Contractual restrictions may be of the character incident to the normal relationships among partners. Substantial powers may be retained by the transferor as a managing partner or in any other fiduciary capacity which, when considered in the light of all the circumstances, will not indicate any lack of true ownership in the transferee. In weighing the effect of a retention of any power upon the bona fides of a purported gift or sale, a power exercisable for the benefit of others must be distinguished from a power vested in the transferor for his own benefit." (H. Rep. No. 586, *supra*.)

The family partnership provisions enacted as section 340 of the Revenue Act of 1951 are not retroactive to the years involved in these proceedings. Nevertheless, the basic principle of taxing income from property to the owner of the property was the law in the earlier years as fully as it is today. A proper appraisal of the evidence is convincing that the trusts in these proceedings were the owners of the property held by them. Petitioner T. H. Brodhead irrevocably parted with a 50 per cent interest in his business property when he created the first trust. The second trust became the owner of that interest by purchase. The corpus has not reverted to him, and it cannot. The income has not been used for the benefit of the settlers but is held intact for the beneficiaries. Such powers as Brodhead had over the corpus by use in his business were no more than those of a managing partner, and in the exercise thereof he was required to act in a fiduciary capacity. After a gift is once complete and title has passed to the donee, the fact that the donor subsequently has possession of it does not affect its validity. *Garrison vs. Union Trust Co.*, 164 Mich. 345, 129 N.W. 691; *Adams vs. Hagerott*, 34 F. 2d 899.

This is not a case like *Ralph C. Hitchcock*, 12 T.C. 22, where a father purported to make gifts to minor children of interests in his business, had himself appointed guardian, and charged their purported distributive shares with the cost of their board and keep. Here we have independent trustees

who received the full distributive share of the trusts for the benefit of the children.

We fail to see wherein the restrictions on the limited partner were such as to invalidate the partnership. The prohibition against transaction of partnership business by the special partner is a normal provision of limited partnership agreements, and in fact is usually provided for by law where limited partnerships are recognized. See Theodore D. Stern, *supra*, where we said that retained control in the general partner "is of no particular significance since limited partners normally have no part in the control or management of the business." 15 T.C. at p. 527.

No question is raised in these proceedings as to whether under the laws of Hawaii a trust may be a member of a special partnership. Neither the statutes of Hawaii nor Internal Revenue Code section 2797 prohibit a trust from being a partner, and we have recognized that trusts can be members of partnerships. See Louis R. Eisenmann, et al., 17 T.C. (Feb. 29, 1952), and Theodore D. Stern, *supra*. See also *Greenberger vs. Commissioner*, 177 F. 2d 990.

The Clifford case question. We hold that the decision in the case of *Helvering vs. Clifford*, *supra*, is not controlling in these cases. The factual differences are so great as to obviate any need for extended discussion. Here we have long-term trusts—the first was to continue until 20 years after the death of the settlor, and the second until the youngest beneficiary attained the age of 33

years. The settlors in these proceedings were not the trustees. They had no discretion as to distribution of income. There could be no reversion of corpus to the settlors.

The respondent makes an argument that the petitioner Thomas H. Brodhead could control the amount of income of the trusts through siphoning off partnership income as compensation for his services. There is no indication that the compensation of Brodhead was more than a reasonable sum for services rendered. Moreover, any compensation taken by him in excess of a reasonable amount would be inconsistent with the purpose for which the respondent charges the trusts and partnership were created, namely, to avoid taxation of income of the business to Brodhead. Also, we have here independent trustees who had available and who, it must be assumed, would use means of preventing the general partner from depriving the trustees' wards of their rightful share of partnership income. A partner does not stand only as such in partnership matters; he occupies a fiduciary relationship to the other partners in all partnership matters and the utmost good faith is required of each in their relations to each other. 68 C.J.S., Partnership, section 76; *Stem vs. Warren, et al.*, 161 N.Y.S. 247. Here the outcome of the partnership operations, mentioned above, indicates as a practical matter entire good faith on the part of the general partner in his dealings with the special partner which inured to the benefit of the trust beneficiaries.

By amended answer, the respondent invokes the

provisions of section 275(c) of the Internal Revenue Code to avoid the operation of the statute of limitations against assessment for the year 1943. This question would require decision only in the event that the trust-partnership income was properly taxable to the petitioners, and if that income was in excess of 25 per cent of reported gross income. As we have held that such income was not income of the petitioners, we do not decide the limitations issue.

Decisions will be entered under Rule 50.

The Tax Court of the United States
Washington

Docket No. 29391

THOMAS H. BRODHEAD and ELIZABETH
S. BRODHEAD, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Opinion of the Court promulgated July 7, 1952, the respondent herein, on October 9, 1952, filed a recomputation for entry of decision, and the petitioners herein, on October 30, 1952, filed an acquiescence in the respondent's recomputation. Wherefore, it is

taxable year 1943 in the amount of \$42,498.49 of which \$62.96 is barred from refund by statute and the balance of which, in the amount of \$42,435.53, was paid within two years before the execution of an agreement to extend the time prescribed by section 275 of the Internal Revenue Code for assessment; that there is an overpayment in income tax for the taxable year 1944 in the amount of \$43,087.69, all of which was paid two years before the execution of an agreement to extend the time prescribed by section 275 of the Internal Revenue Code for assessment; and that there is a deficiency in income tax for the taxable year 1945 in the amount of \$2,496.65." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondents on review, Thomas H. Brodhead and Elizabeth S. Brodhead, are husband and wife whose mailing address is 843 Kaahumanu Street, Honolulu, Territory of Hawaii, and who resided during the taxable years in Hawaii. The taxpayers filed their Federal income tax returns for the calendar years 1943, 1944, 1945 and 1948, the taxable years here involved, with the Collector of Internal Revenue for the District of Hawaii.

Nature of Controversy

The sole question which was presented to and passed upon by The Tax Court of the United States is whether the income of a partnership in which the taxpayer, Thomas H. Brodhead, was a general partner, and a trust created for the benefit of the

taxpayers' minor children was designated as a special partner, was taxable to the taxpayers, in so far as the share thereof allocable to the trust was concerned, under the doctrine of *Helvering vs. Clifford*, (1940) 309 U.S. 331, as well as the income of an earlier trust created by the husband for the benefit of their children which earlier trust was superseded as a special partner in 1943 by a trust created in 1943.

In and prior to 1942, the taxpayer, Thomas H. Brodhead, was engaged as an individual in operating a wholesale merchandise business in Honolulu, the merchandise handled by his business consisting of a great variety of articles which were sold to post exchanges, and ships' service stores. On September 30, 1942, the taxpayer, Thomas H. Brodhead, created, for the benefit of his children, the Thomas H. Brodhead Trust, the Bishop Trust Company, Limited, and Mortimer J. Glueck being named as trustees. The corpus of the trust consisted of a one-half interest in the taxpayer's business, stated to be the sum of \$40,000, which corpus, under the trust agreement, was to be contributed to the capital of a special partnership to be organized for a 50 per cent interest in such partnership. On the same date, September 30, 1942, a special partnership was formed, called the T. H. Brodhead Company, of which partnership Thomas H. Brodhead was designated as "General Partner" and the trustees of the trust hereinabove mentioned were referred to as "Special Partner." It was agreed that \$40,000 was the capital contribution of each

of the partners and that each had a 50 per cent interest in the partnership. Only the general partner had authority to transact the business of the partnership, or to incur obligations. The taxpayer, Thomas H. Brodhead, conveyed to the special partnership the rights, property, assets, and privileges owned by him and used in his merchandising business and the partnership agreed in the bill of sale to assume the liabilities disclosed by the balance sheet of the business attached thereto.

On February 28, 1943, the taxpayer's wife, Elizabeth S. Brodhead, created the Elizabeth S. Brodhead Trust, for the benefit of their children, the trustees of which latter trust were the same as those of the Thomas H. Brodhead Trust. Thomas H. Brodhead gave his wife \$10,000 which she paid in to the trust created by her. On the same date, February 23, 1943, the Elizabeth S. Brodhead Trust purchased from the Thomas H. Brodhead Trust its 50 per cent interest in the special partnership, having paid to Thomas H. Brodhead Trust the sum of \$10,000 and having given its note for the unpaid balance of the purchase price of the 50 per cent interest in the amount of \$30,000 with interest at 5 per cent. Thereupon the Elizabeth S. Brodhead Trust became a special partner. The name of the partnership was changed from T. H. Brodhead Company to Ace Distributors on February 28, 1947.

In his notices of deficiencies, the Commissioner held that the partnership was not a valid partnership and that all of the income of the alleged partnership (computed on the basis of fiscal years

ending on the 28th of February) a portion of which had been reported in fiduciary returns filed by the Thomas H. Brodhead Trust and the Elizabeth S. Brodhead Trust, was taxable to the taxpayers, Thomas H. Brodhead and his wife, Elizabeth S. Brodhead. In making his determinations the Commissioner allocated the fiscal year incomes of the partnership to the taxpayers on a calendar year basis. The Tax Court of the United States disagreed with the Commissioner's determination and held that the trusts were bona fide partners in the partnership and that their distributive shares of partnership income were not income of the taxpayer settlors. The Court held, further, that the settlors did not retain sufficient control over, or interest in, the trusts to make the trust income taxable to them.

/s/ CHARLES S. LYON,

Assistant Attorney General

/s/ CHARLES W. DAVIS,

Chief Counsel Bureau of Internal
Revenue

Attorneys for Petitioner on Review

[Endorsed]: T.C.U.S. Filed Jan. 19, 1953.

[Title of U. S. Court of Appeals and Causes.]

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled causes, by his attorneys, H. Brian Holland, Assist-

ant Attorney General, and Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in these proceedings:

The Tax Court of the United States erred:

1. In entering its decisions "That there is a deficiency in income tax for the taxable year 1948 in the amount of \$18.98" and "That there is an overpayment in income tax for the taxable year 1943 in the amount of \$42,498.49 * * *; that there is an overpayment in income tax for the taxable year 1944 in the amount of \$43,087.69 * * *; and that there is a deficiency in income tax for the taxable year 1945 in the amount of \$2,496.65."

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner.

3. In holding and deciding that the trusts created by the taxpayers for the benefit of their minor children were bona fide partners in the partnership involved and that their distributive shares of partnership profits were not income of the taxpayers herein.

4. In failing and refusing to hold and decide that the trusts created by the taxpayers for the benefit of their minor children were not, for Federal income tax purposes, recognizable partners in the taxpayer's business known as T. H. Brodhead Company, later called Ace Distributors.

5. In holding and deciding that the settlor-taxpayers did not have any rights in the trust corporation income sufficient to make the income of the trusts taxable to them.

6. In failing and refusing to hold and decide that, under the doctrine of *Helvering vs. Clifford*, 309 U. S. 331, the income of the trusts created by the settlor-taxpayers for the alleged benefit of their minor children was taxable to the settlor-taxpayers.

7. In that its ultimate conclusion that the trusts created for the taxpayers' minor children were bona fide trusts created for the benefit of the said children and that the taxpayers did not have any substantial control over, or interest in, the corpora or the income of the trusts is not supported by but is contrary to its underlying findings of fact.

8. In that its opinion and its decisions are not supported by but are contrary to the Court's findings of fact.

9. In that its opinion and its decisions are not supported by but are contrary to the evidence.

10. In that its opinion and its decisions are contrary to law and the Commissioner's regulations.

/s/ H. BRIAN HOLLAND,
Assistant Attorney General

/s/ CHARLES W. DAVIS,
Chief Counsel Bureau of
Internal Revenue
Attorneys for Petitioner on Review

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed April 2, 1953.

[Title of Tax Court and Causes No. 29391-2.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents 1 to 41, inclusive, constitute and are all of the original papers and proceedings, including Exhibits (1 thru 45), attached to the Stipulation of Facts, Respondent's Exhibits (A thru E), admitted in Evidence, on file in my office as the original and complete record in the proceedings before The Tax Court of the United States in the above-entitled proceedings and in which the respondent in The Tax Court proceedings has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia this 8th day of April, 1953.

[Seal]

/s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the
United States

Before The Tax Court of the United States

Docket No. 29391

In the Matter of: THOMAS H. BRODHEAD
and ELIZABETH S. BRODHEAD,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 29392

In the Matter of: THOMAS H. BRODHEAD
and ELIZABETH S. BRODHEAD,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

TRANSCRIPT OF PROCEEDINGS

No. 2 Courtroom, Federal Building, Honolulu, T.H.
9:30 a.m. to 12:40 p.m.—June 20, 1951

Pursuant to notice, the above entitled matter
came on to be heard.

Before Honorable C. R. Arundell, Judge.

Appearances:

Urban E. Wild, Esq., Milton Cades, Esq., (Smith,
Wild, Beebe & Cades), Bishop Trust Bldg., Hono-
lulu, T.H., appearing on behalf of Petitioners.

Charles W. Nyquist, Esq., (Treasury Department Counsel) appearing on behalf of Respondent. [1*]

THOMAS H. BRODHEAD

Petitioner, called as a witness in his own behalf, being first duly sworn was examined and testified as follows:

The Clerk: Please state your name and address for the record.

The Witness: Thomas Holmes Brodhead, 1468 St. Louis Drive, Honolulu.

Direct Examination

Q. (By Mr. Wild): Mr. Brodhead, are you one of the petitioners in Docket number 29391 and also Docket number 29392 now on trial before the Court? A. I am.

Q. And the other petitioner is Elizabeth S. Brodhead, and she is here in court, is she?

A. She is.

Q. Mr. Brodhead, what business were you engaged in in 1940? A. The wholesale business.

Q. And where?

A. 843 Kaahumanu Street.

Q. In what city?

A. Honolulu, Territory of Hawaii.

Q. And had you been conducting that business for a considerable period of time? [22]

A. I had.

Q. What type of business was it, was it a wholesale or retail business, or what was it?

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Thomas H. Brodhead.)

A. It was wholesale.

Q. Wholesale of merchandise, was it?

A. Of general merchandise which consisted of a great variety of items such as drug items, which included tooth paste and brushes, razor blades and associated items that were sold to post exchanges and ships service stores; a great deal of items like dungarees, shoes, underwear and work shirts; miscellaneous items like pocket knives and shower clogs and things like that. In other words, it was a very diversified business because of the essential things that army and navy people bought in the exchange stores. It also included candy, gum and things like that.

Q. Did you also sell fruit juices and other products of that type? A. I did.

Q. Now when was it that you first considered the idea of creating a trust for your child or children that you might have?

A. Well, that had been going on for quite some time before it was actually started. Mr. Glueck and I used to have a lot of conferences because of the fact that he was keeping my books, was my advisor and knew my financial status, and [23] he had known me for a number of years and had opened up my original set of books, so he grew up with the company, or with my business rather, and I was discussing with him when I had chances, of what to do. He was urging me to take steps and I was so busy with the company, or I should call it my own business, that I just didn't get around

(Testimony of Thomas H. Brodhead.)

to it for awhile until things got over my head, you might say, and I just had to make a decision.

Q. Well, about when was it that you finally made a decision?

A. Around August or September after the war started. That would make it 1942.

Q. What was done at that time?

A. Mr. Glueck and myself had sort of a hot discussion between us. He reminded me that I had been going to do it for a long time now. I had to take time away from business and do something about it. So we went to counsel and met Mr. Milton Cades and discussed the matter with him. Mr. Glueck went along with me. We went over the pros and cons of my problems and my thoughts on it, and it developed from there.

Q. Well, what did you desire to do with your business at that time?

A. I was particularly interested in getting assistance, because the business had grown by leaps and bounds, especially after the war started, because I was one of the six signers of a contract on December 10, that opened December [24] 10, 1941, and as a result I was able to get additional business because of the needs of the navy especially.

Q. Well now, come back to your business. What did you yourself decide that you wanted to do with the business, continue it as an individual, or do what with it?

A. I couldn't continue it as an individual. I could have, yes, but it was too risky. It was getting

(Testimony of Thomas H. Brodhead.)

up into figures that were scaring me, and I knew that I had everything invested in there, and I didn't want to risk everything. I needed somebody to help me, and I also wanted to look after my children. We had one then. When my wife and I were married I asked her to agree to two or none, because I am an only child. I wanted to see that they were provided for and have the education which I did not have, and that was the main thing.

Q. Well, what did you do as a result of that determination and your conference or conferences?

A. It was decided that we would set up a trust for the children.

Q. Who are the "we" you talk of?

A. Mr. Glueck, Mr. Cades and myself, because it was a three-way discussion, to set up a trust for the children and that I would manage that, but that it the same time would get the assistance of the trust company for advice.

Mr. Wild: I didn't get that last answer. Will [25] you read the answer, please?

(The last answer was read by the reporter.)

Q. (By Mr. Wild): Did you mean by that that you were going to run the trust?

A. Absolutely not.

Q. Well, what were you going to manage? What were you referring to?

A. The business itself.

Q. I see. And what was the trust capital to consist of?

(Testimony of Thomas H. Brodhead.)

A. Everything I had was in the business. That was it.

Q. Well, do you mean to say by that that you were turning your whole business into this trust?

A. No, we would take the value of the business at that time and split it into two parts, one part for the trust company and one part for myself.

Q. And at that time did you also discuss as a part of the proceedings a formation of a special partnership, a partnership to take over the business?

A. You mean a partnership with the trust company and myself?

Q. That's right, a partnership, did you discuss it? A. That is correct.

Q. And what was decided to be done in regard to that?

A. In that case I was to run the business.

Q. No, I am not asking you who was in control of the [26] business. I am just asking you what you decided to do, if anything, about a partnership?

A. Well, it was later decided in consultation with the three of us that the Bishop Trust Company would be the special partner.

Q. And was anyone else to be a special partner with them? A. Yes.

Q. Who was that?

A. I requested that Mr. Glueck be a special partner with them in view of the fact that he had been my accountant for years. He then had his office in my building, the same building that I was

(Testimony of Thomas H. Brodhead.)

in, and he had grown up with the business. I had a lot of confidence in him, and he was formerly a roommate of mine when we were bachelors at Waikiki Beach.

Q. At that time had he told you anything about whether he could continue to keep your books and act for you as he had before?

A. That was one of the main things that made me do this, was the fact that he said he could not continue on. The business was getting too big, and he didn't feel capable of advising me alone.

Q. Let me ask you this question: Was overseeing your books his only business?

A. No, this was a sideline for him. He was doing it as an accommodation at no salary, and he said that he just [27] couldn't keep it up, which fact I appreciated, but I hated to lose him.

Q. What business was he in?

A. At what time are you referring to?

Q. At this time when you were discussing setting up the special partnership, when you asked that he be a special partner.

A. He was in the commission business by himself.

Q. And was that a business of some considerable size? A. His?

Q. At that time, his business?

A. It was growing. It was in its first year, as I recall it.

Q. Now after you set up your trust at first and the special partnership with yourself as general

(Testimony of Thomas H. Brodhead.)

partner and Mortimer Glueck and Bishop Trust Company, Limited, as special partners, after that was done were you called by counsel and advised anything about taxes?

A. I don't quite understand; immediately after this was formed?

Q. No, at sometime after you had formed your partnership and had set up this trust, sometime after that.

A. Yes.

Mr. Nyquist: Your Honor, I would like to ask petitioners' counsel to refrain from leading questions at [28] this point.

The Court: Yes, very well.

Q. (By Mr. Wild): And what resulted from that contact, and about when was it, if you recollect?

A. It was approximately four or five months after the Thomas Holmes Brodhead trust was et up. Counsel called me and told me that the trust was, as a result of a Supreme Court decision as I remember it, was liable for the entire taxes, that I was responsible for the entire taxes of the trust and of the entire profits of the business, let's put it that way, and I asked, not knowing too much about it, what that meant, and it was found that—or I found out that if I had to pay the entire income taxes on the entire business, the profits of the entire business, I wouldn't have anything left, because I would still have to pay 50% to the special partner on all the profits and still pay all the taxes, and that was impossible.

(Testimony of Thomas H. Brodhead.)

Q. What did you do then? Did you consider that problem?

A. Most certainly. I asked what I could do about it, as I couldn't continue on that way. So I went to counsel for advice, and I was informed that I could either buy out the special partner or another trust could be set up at that time.

Q. Was anything said about your power of termination of the partnership business upon notice being given?

A. As I understand it, in the original trust, that I can [29] terminate it on sixty days' notice.

Q. Wait a minute, in the original trust?

A. The Thomas H. Brodhead trust.

Q. In the trust or the partnership?

A. In the partnership.

Q. Is there any such provision as that in the Thomas Brodhead trust? A. No.

Q. Very well. Now was any consideration given by you to the possibility that you might terminate the partnership?

Mr. Nyquist: Your Honor, I object to that question as leading.

The Court: I will ask counsel to avoid leading.

Mr. Wild: Very well.

Q. (By Mr. Wild): Recount all the factors that were considered when you were faced with the prospect of having to pay all the taxes on the total business income and only get half of the income.

A. Well, when that was pointed out to me that I would end up with nothing, in fact be in the hole,

(Testimony of Thomas H. Brodhead.)

that isn't business. I couldn't afford to do that. If I discontinued the partnership or bought it up entirely, I would be right back to where I started, and I had just gotten started under the new setup and was very happy, and I asked what could be done to continue it as is and still everything be on the [30] up and up, if you want to call it that, proper.

Q. And as a result of that, did you discuss anything with any representative of the Bishop Trust as well as Mortimer Glueck?

A. I discussed it with Mr. Glueck, because I went back to the office and he was the first one I saw, and after further consultation with him I came back and saw Mr. Cades. I do not recall whether I saw Mr. White or not.

Q. Did you discuss this at all with your wife at that time? A. I did.

Q. Now as a result of these discussions, what did you do?

A. Counsel advised me that another trust could be set up eliminating certain things in the Thomas Brodhead trust which had been ruled on by the Supreme Court, and upon counsel's advice a second trust later known as the Elizabeth Brodhead trust was formed.

Q. Did you participate in the formation of the second trust?

A. As advisor—would you state that in another way?

Q. Very well, did you contribute anything to

(Testimony of Thomas H. Brodhead.)

your wife as the starting capital of the second trust?

Mr. Nyquist: I object to the leading question.

The Court: Overruled.

Q. (By Mr. Wild): You may answer the question.

A. As I recall, I gave my wife \$10,000 and paid the taxes [31] thereon to her.

Q. What do you mean by paid the taxes thereon?

A. It was reported as gift tax.

Q. I see.

A. I paid the gift tax I remember on \$10,000 which I gave her.

Q. And what was that sum used for, if you know?

A. It was used as her down payment on the purchase of the Thomas Brodhead trust.

Q. What did it purchase from the Thomas Brodhead trust?

A. The 50% interest in the trust, the special partner's 50% interest in T. H. Brodhead Company.

The Court: What do we have here? Do we have two trusts in this case?

Mr. Wild: Yes, your Honor.

The Court: After she purchased the interest, does the old trust continue?

Mr. Wild: Oh, yes, both trusts continue and their accounts are in the record, your Honor, with substantial increases.

Q. (By Mr. Wild): In the Elizabeth Brodhead

(Testimony of Thomas H. Brodhead.)

trust after that was formed, was the partnership then changed?

A. There was no change in the operation of the partnership except that there was another trust set up as a special partner. That was all, if that is what you mean. [32]

Q. And then after the Elizabeth Brodhead trust became the special partner, who managed the partnership business of Thomas Brodhead and Company? A. I did.

Q. And did you or did you not receive special compensation for your services? A. I did.

Q. And what was the amount of that compensation which you received, first for the fiscal period from October 1, 1942, to the end of February, 1943?

A. In that fiscal year I received \$6,250 as salary.

Q. And how was that used in computing the profits of the partnership?

A. That was paid to me first the same as any other employee in the concern, and then after all expenses including my salary and the rest of the employees' salaries, then the profits were divided.

Q. And what amount did you receive for the period from March 1, 1943, through February 28, 1944? A. Fifteen thousand dollars as salary.

Q. And the same question for 1945?

A. Eighteen thousand dollars.

Q. And the same for 1946?

A. Eighteen thousand dollars.

Q. And 1947?

A. Eighteen thousand dollars. [33]

(Testimony of Thomas H. Brodhead.)

Q. And 1948?

A. There Ace Distributors was formed, and T. H. Brodhead Limited and from Ace Distributors I received \$9,000.

Q. And what did you receive from the corporation?

A. As I recall, \$9,000. The business was split and my salary was split.

Q. Did you yourself consider these salaries concerning which you have testified as ample compensation for the value of your own services to these businesses? A. I did.

Q. During that time? A. Yes.

Q. Mr. Brodhead, during all of the periods of time from the formation of the special partnership down to the present time, who has paid for the living expenses of your children and your wife?

A. Myself alone.

Q. And out of what moneys?

A. Moneys that I have earned.

Q. Did you receive any moneys from the trust, your trust, the Thomas Brodhead trust?

A. No, and none were ever requested.

Mr. Wild: I think the Ace Distributors change is all stipulated, the time of it and all that. I think all that is in the stipulation. [34]

The Court: Was there a new partnership organization at the time of the Elizabeth Brodhead trust?

Mr. Wild: They went through all the steps essential to amending the old special partnership under our Hawaiian statute and changing that, sub-

(Testimony of Thomas H. Brodhead.)

stituting the new special partner for the old special partner so that there was no change there. Then later on the name, as shown in the stipulation, the name of the Thomas H. Brodhead Company special partnership was changed to Ace Distributors. That was at the time when they turned over half of the business shown in the stipulation to a new corporation, half of the stock went to the Elizabeth Brodhead trust and the other half went to the other partner.

The Court: Is that shown here in this stipulation?

Mr. Wild: Yes, it is in the stipulation.

The Court: The new partnership, so to speak.

Mr. Wild: Yes, it is not really a new partnership under our concept of the law here, your Honor. We have a special partnership law in which a special partner may buy the interest of another and if it is agreeable then there is a substitute in that same old special partnership.

The Court: Sort of uniform partnership?

Mr. Wild: Well, our special partnership act was later supplanted by the uniform partnership act. In 1943 [35] it became effective, but prior to that time under our law we had what was known as a partnership act providing for special partnerships.

The Court: But I mean one way you can convey an interest and it continues.

Mr. Wild: Well, you have to file your various

(Testimony of Thomas H. Brodhead.)

papers in the Treasurer's office, and upon such filing it continues right on, your Honor.

The Court: Very well.

Q. (By Mr. Wild): Now after Mortimer Glueck and Bishop Trust Company, Limited, became special partners in Thomas Brodhead Company, the partnership, did you consult with them as special partners?

A. I did. I always considered that I had—there were two people in the business, the special partner and myself, and it has always been operated that way.

Q. And how often would you have conferences with one or the other of the trustees, who were special partners?

A. Well, Mr. Glueck was in the same building with me. It was every day or every couple of days, several times a week, as things turned up. Later when he moved to the Bishop Trust Building, I would go over and see him. I also, at the same time that the partnership was formed, took on Cameron and Johnstone as my accountants. He was on the same floor with them, and I went over there very often to Cameron [36] and Johnstone, and I would stop in and see Mr. Glueck and go down to the Bishop Trust Company's office and see Mr. White and tell him how things were going along. And every time a financial report was put out, I always immediately went over there and discussed it with them and left them a copy of it.

Q. Now you mentioned Mr. White. Was there

(Testimony of Thomas H. Brodhead.)

any other officer of Bishop Trust Company that you consulted in connection with this special partnership business?

A. When Mr. White was not there, Mr. Benner would answer the questions. However, I usually found Mr. White in. If he was not, I saw him the next time that I was there when he wasn't busy.

Q. Did you have similar conferences after Mr. White left with Mr. Benner?

A. I absolutely did, in fact more so because times became more troubled and I had even more with Mr. Benner.

Q. And the times you had these conferences with Mr. White did Mr. Benner join in them sometimes?

A. It was with them that I had the conferences.

Q. Well, perhaps I misunderstood your answer to my first question and that was that you had spoken with Mr. White in the Bishop Trust Company. At that same time did you speak with Mr. Benner on frequent occasions?

A. Not so much with Mr. Benner because Mr. White was [37] the number one man. Mr. Benner's desk was right next to him.

Mr. Wild: No further direct.

Cross Examination

Q. (By Mr. Nyquist): Mr. Brodhead, I believe you stated on direct examination that Mr. Glueck had opened up your original set of books and grew up with your company. Can you tell us about when that original set of books was opened up?

(Testimony of Thomas H. Brodhead.)

A. As I recall, I started in business here in 1935 and he set up my original books.

Q. Had you been in the islands before 1935?

A. In 1934 I originally came here.

Q. Did you know Mr. Glueck before you came here? A. I did not.

Q. But you have known him since 1935?

A. Yes, because we were roommates together in a rooming house, I guess you would call it, at Pua-Lei-Lani at Waikiki Beach.

Q. You shared your living quarters with him at that time, is that correct?

A. We did.

Q. And his office was near your office, was it?

A. He was working right down the street here at a butter and egg concern. I have forgotten the name, and I was over here on Kaahumanu Street, about five or six blocks away. [38]

Q. It was close enough that you could get together frequently for lunch, was it? A. Yes.

Q. And during this period you would frequently get together for lunch? A. Which period?

Q. The early years from 1935 to the start of the war, let us say.

A. No, may I say no to that question and explain? During those years I was working during the daytime, I was out at Pearl Harbor working from morning to night, and even when I started the business when Mr. Glueck was first with me, and he moved out because of the fact that I stayed up all the time working in the room. He would

(Testimony of Thomas H. Brodhead.)

come in and I would be burning the lights and he couldn't go to bed.

Q. I believe you testified on direct examination that about this time in 1941 or 1942 you began to consider the business too risky to continue it as an individual. Will you explain just what you meant by that?

A. Yes, if I may go back. I started in this business—let's put it this way: There were four destroyers out here and a submarine. Later there were eight. Then it jumped when the Hawaiian detachment came here, which was a part of the fleet, and then it jumped some more. Then, if you will recall, the fleet was stationed here just before the [39] war. They only came over for maneuvers, and suddenly without notice they stayed, and that pushed the business up, and when you have an entire fleet calling on you for deliveries, because the ships order direct from us, and we had to work night and day. I had to expand quarters. And then the war came along, and you didn't know here what was going to happen at any time, and it got up into figures where even I couldn't realize that they had grown so fast and so big. I couldn't keep track of them.

Q. But when you say it was risky, you mean it was subject to fluctuations up and down depending upon such things as the number of men the military had stationed here?

A. Not so much that as that you were buying things on the mainland, fluctuations in market conditions, bringing them over here during the war

(Testimony of Thomas H. Brodhead.)

times, especially when they had convoys. You had accounts outstanding on ships that I didn't know what would happen, went down or sunk at sea, because our accounts were with the ship.

Q. In other words, you regarded the business as somewhat speculative or risky?

A. I had confidence in the navy, but what if ships went down and couldn't pay their bills, would I get my money back? I had so much confidence in it that I extended credit to the ships even after the war started, because I felt it was a patriotic and necessary thing to do, as I [40] was part of it.

Q. I understood you to testify on direct examination that it was because of this business risk that you decided to set up the trust.

A. It was more than I felt that I could handle. There were too many problems coming up. There was a problem of accounting. Mr. Glueck wanted to get out of that. There was a problem of buying. There was a problem of getting merchandise over here. There was the help problem.

Q. Which of these problems would the trust take over?

A. The general advising, where I could go to them and tell them the situation and what I wanted to do and whether I was right in that way of going about it. I also took on Cameron and Johnstone, which was a big help too, especially on the accounting end.

Q. Did the trust employ any people for your firm?

A. Do what?

(Testimony of Thomas H. Brodhead.)

Q. Did the trust employ any people, handle any of your employment problems?

A. They hired none of the personnel.

Q. Did they do any of the accounting work for your firm?

A. Cameron and Johnstone did that.

Q. Did they do any of the buying for your firm?

A. They did not.

Q. Did they do any of the selling? [41]

A. They did not.

Q. You say at the time you decided some change should be made in your business you consulted an attorney. Who was the attorney?

A. Milton Cades.

Q. Is he the same attorney that you consulted in connection with the establishment of the Elizabeth Brodhead trust? A. He is.

Q. At the time the first trust was set up, the trust agreement which is exhibit one in this proceeding states, "The Settlor, in consideration of the love and affection he bears to the beneficiaries and of the acceptance by the trustees of the trust herein created, does hereby transfer, set over and deliver to the trustees, their successors in trust and assigns, the sum of \$40,000." At that time was any cash actually transferred?

A. No, there was not, as I recall it.

Q. And at the time the Elizabeth Brodhead trust was created and I read from Exhibit five, "The settlor, in consideration of the love and affection she bears to the beneficiaries and the acceptance

(Testimony of Thomas H. Brodhead.)

by the trustees of the trust herein created, does hereby transfer, set over and deliver to the trustees, their successors in trust and assigns, the sum of \$10,000." Do you know whether that was actually in cash?

A. I do not. [42]

Mr. Nyquist: May this document be marked Respondent's Exhibit A for identification?

The Court: Very well.

(The document referred to was marked Respondent's Exhibit, 'A' for identification.)

Q. (By Mr. Nyquist): Mr. Brodhead, I show you Respondent's Exhibit "A" for identification, a document entitled Gift Tax Return for the Calendar Year 1943, showing donor Thomas H. Brodhead, and ask you if that is the return which you filed for the year 1943?

A. That is the return that was made up by the accountants, by my accountant, the accountants for the business, Cameron and Johnstone, and that is my signature.

Q. I asked you whether that is the return that you filed for the year 1943?

A. That is the one that Cameron and Johnstone made up for me, evidently for 1943, and I have signed it.

Q. It shows over here "Received by Collector of Internal Revenue March 15, 1944." Did you file it with the Collector, or did someone file it on your behalf?

A. Cameron and Johnstone filed it for us.

(Testimony of Thomas H. Brodhead.)

Mr. Nyquist: I offer in evidence Respondent's Exhibit "A" for identification.

Mr. Cades: No objection.

The Court: Received. [43]

(Respondent's Exhibit "A" for identification was received in evidence as Respondent's Exhibit "A.")

Q. (By Mr. Nyquist): Now I show you on the reverse side of Exhibit "A" a description of a gift to Elizabeth Brodhead on February 28, 1943, in the amount of \$10,000.00, and I note under there the word "Cash" appears. Do you know for sure whether cash was in fact given at that time?

A. I do not.

Q. Do you have any recollection of giving a note in the amount of \$10,000 at about that time?

A. I do not.

Q. Going back to the time that you set up the Thomas Brodhead trust, did you know any other people who set up similar trusts at about that time?

A. No. I did have a cousin in Hilo who had had a trust for her personal property, however.

Q. But did you know any other individuals who set up trusts and made the trusts members of partnerships at that time?

A. No, I did not, that I recall.

Q. Now at the time you created the Thomas Brodhead trust, you put in that trust instrument a provision that the trustee should contribute the sum of \$40,000 to the capital of the partnership known as the T. H. Brodhead Company for a 50% interest

(Testimony of Thomas H. Brodhead.)

therein, and the statement appears, "Said sum [44] being a fair and reasonable value of said interest duly ascertained as of September 30, 1942." Can you tell me what you mean by that statement, "Said sum being the fair and reasonable value of said interest"? In other words, how did you determine the fair and reasonable value of said interest?

A. Cameron and Johnstone took over the books immediately the partnership was formed. Mr. Glueck before that, I believe, had brought the books up to date as of the end of September, or whatever date it was, and when it was formed the value of the company, or my business at that time—it was then known as T. H. Brodhead—was approximately \$80,000.

Q. In other words, when you use value there, you are referring to the book value as it appeared on your books at that time, is that correct?

A. I am putting it as cost of merchandise, accounts receivable, payable, everything taken into consideration as to the value of the business at that time.

Q. And the physical assets at their depreciated value on your books?

A. That is an accounting question that I could not answer.

Q. Did you take into account any good will that the business might have had at that time? [45]

A. I did not.

Q. But the business was relatively prosperous at that time, was it not? A. Yes, it was.

(Testimony of Thomas H. Brodhead.)

Q. And did you consider it had a going concern value over and above the value of those fixed assets?

A. In those days you couldn't contemplate anything because the war had just begun and we were still in a very unsettled condition here.

Q. Would you have sold a 50% interest to an outsider for \$40,000?

A. No. I wouldn't have sold.

Q. Now I show you Exhibit four, entitled a Certificate of Special Partnership and affidavits which affidavit was signed by you as a general partner, and it has been stipulated that that document was filed with certain local governmental officials. Will you tell us what the occasion was for your signing that document?

Mr. Wild: Might I ask what the purpose of this is? This is stipulated in the record as having been filed, and if that is the evidence, I don't know what the purpose is.

Mr. Nyquist: This is cross examination, your Honor. I am asking him what his purpose was.

Mr. Cades: It is stipulated it was filed as [46] required by law.

The Court: Overrule the objection. Can you answer the question? Do you know why?

The Witness: It says here it was filed in the Treasurer's office, and I imagine it means that it is a certificate of partnership which they have to file here in the Territory.

Q. (By Mr. Nyquist): Let me ask how did you

(Testimony of Thomas H. Brodhead.)

happen to file it? Did you know it should be filed?

A. I did not. I was advised by counsel.

Q. You were advised by counsel, Mr. Cades?

A. Either Mr. Cades or Cameron and Johnstone. I don't remember which. I relied on them for business details of that type.

Q. Now at the time that the Elizabeth Brodhead trust was created, I believe that on direct examination you testified that it was created because you found you had some sort of a tax problem and you were advised that this was a solution to the problem. Will you explain just how you understood the Elizabeth Brodhead trust was to solve your tax problem?

A. As I understood it, the Thomas Brodhead trust allowed certain moneys to be paid out to the children in case—for their maintenance and support and education in case of necessity. In other words, if I went broke or anything like that, died, something like that; and that a Supreme [47] Court decision had ruled it as making me personally responsible for all the income, and that by setting up a new trust eliminating that, which would make it so that I could not have anything to say, do or anything else with the new trust, that everything was in the entire hands of the trust company.

Q. Well, what was to happen to the Thomas Brodhead trust after the change took place, after the new trust was created?

A. That was to remain as it was, two separate entities.

(Testimony of Thomas H. Brodhead.)

Q. Wasn't it your understanding that the income of that trust would still be taxable to you?

A. I believe at that time the trust—that had all been arranged for, the payment of the taxes on that. This had only gone for four or five months. I mean, it was practically overnight.

Q. Let me ask you this: When the Elizabeth Brodhead trust bought the partnership interest from the Thomas Brodhead trust, what did the Thomas Brodhead trust do with whatever it received as consideration?

A. That was in the trust company's hands. I had nothing to say about that. I am only the general partner and half owner in the business.

Q. Did the Thomas Brodhead trust loan \$10,000 to your business immediately after the creation of the Elizabeth Brodhead trust? [48]

A. I don't know. I do not recall. I was too busy making sales and getting merchandise to take care of bookkeeping details.

Q. Did you believe that the sale of this interest to the Elizabeth Brodhead trust would leave the Thomas Brodhead trust without assets?

A. No.

Q. Did you believe that the Thomas Brodhead trust would have assets that would be invested and receive income on?

A. It was a debt owed. It was a debt, I mean on the books of the company. It was there.

Q. What was the debt on the books of the company, a debt to the Thomas Brodhead trust?

(Testimony of Thomas H. Brodhead.)

A. The \$40,000.

Q. What \$40,000?

A. The original investment of the special partner, and all the earnings for that five-month period were the property of the Thomas Brodhead trust.

Q. Yes, but originally when you set up the Thomas Brodhead trust, you stated in the trust agreement that it had a \$40,000 gift to start with. What happened to that \$40,000?

A. What happened?

Q. Yes.

A. It is all in the Thomas Brodhead trust.

Q. And what did you contemplate that the trustee would do [49] with that \$40,000 after the creation of the Elizabeth Brodhead trust?

A. Invest it.

Q. Invest it; and did you contemplate that they would receive income on it?

A. A certain amount, yes.

Q. And since you were aware of the Supreme Court decision which you thought made you taxable on the income of that trust, didn't you expect to have to pay an income tax on whatever income that trust had? A. No.

Q. Why not?

A. Because that was already formed, money paid in. I mean that was on their books as their property and not mine from there on.

Q. Well, let's put it this way: Did you expect that whatever investments that the Thomas Brodhead trust might make would produce income in

(Testimony of Thomas H. Brodhead.)

amounts comparable to the 50% partnership interest profits?

A. I am a little confused on the question.

Q. Let me rephrase to make it clearer.

A. Yes.

Q. During the first year of its existence, the Thomas Brodhead trust showed a distributive share of income from the T. H. Brodhead Company of \$36,681.45. [50]

A. It showed as what?

Q. The Thomas Brodhead trust showed that as its distributive share of the income from T. H. Brodhead Company for the fiscal year ending September 30, 1943. Now did you believe that the income of the Thomas Brodhead trust would continue to be that high, or that it would be a lesser amount after the creation of the Elizabeth Brodhead trust?

A. Well, it would be much less.

Q. Much less. Why would that be?

A. Well, normal stocks and bonds do not pay that much interest.

Q. You mean the same amount of money invested in other places you wouldn't expect to produce income in anywhere near that amount, is that correct?

A. Yes.

Q. How many children did you have at the time this Thomas Brodhead trust was created?

A. One and the possibility of another one.

Q. As I understand, one of your purposes in creating the trust, you state, was to provide for your children in the event something should happen to you, is that correct?

(Testimony of Thomas H. Brodhead.)

A. That is correct.

Q. Did you make any similar provision for your wife? A. No.

Q. Why was that? [51]

A. Well, I had insurance to take care of her.

Q. We have spoken about investments made by the Thomas Brodhead trust after it sold its interest in the partnership. Did the trustee consult with you, or did you consult with the trustee about the investments which the trust made?

A. The trustee would show me a list of what their investment department recommended and ask my consideration of same.

Q. And then did you signify your approval of certain investments?

A. I did.

Q. And after that the trust would make the investment that you had approved, is that correct?

A. That is correct. They approved them. That was their prerogative.

Q. In other words, you both approved them?

A. We both approved them. Mr. Glueck, I believe, had to approve them too.

Q. Was that also true of the other trust?

A. The Elizabeth Brodhead trust?

Q. Yes. A. I don't know.

Q. Did you ever discuss with the trustees the investment of the Elizabeth Brodhead trust?

A. I have not, as I recall. [52]

Q. Did you ever discuss with your wife the investments of the Elizabeth Brodhead trust?

(Testimony of Thomas H. Brodhead.)

A. I have. I discussed my business problems with her at all times. Let's put it that way.

Q. Did you advise her on such investment matters?

A. No; the same as with the Thomas Brodhead trust, a trust company where their department knows a lot more about investments than I do. I am a greenhorn. The only thing to do is to take the advice of experts on it. That is their business, not mine.

Q. Therefore, you just adopted their recommendations, is that true?

A. One request I made was that they consider the investments not from a return for them but a safety of investment, and at one time I did ask that government bonds be purchased rather than other types of stocks. That was my request at one time, and another time was a certain local stock had gone down and I requested that when it went up again that it would be better, that I would recommend that they sell it out and get into something more on a national scale, on a larger scale, rather than a local scale.

Q. Did the trustees consult with you on occasions about withdrawing their share of the partnership profits from the business?

A. They did. [53]

Q. Did they frequently make requests of you for money to be used to pay trust taxes?

A. They did.

(Testimony of Thomas H. Brodhead.)

Q. And after such requests you would distribute the money to them? A. That is correct.

Mr. Nyquist: I have no further questions, your Honor.

The Court: Is that all the money that was distributed? That is, you just gave the trust enough to pay the taxes and left the rest in the business?

The Witness: No. As of today 50% of everything has been distributed to the trust company. The Ace Distributors end has all been settled up. There is \$5,900 in the bank, of which \$2,500 is the Elizabeth Brodhead trust's, and the remainder belongs to me. But the rest has been straightened out, and the Ace Distributor's end is practically wiped out. Brodhead Company, Limited, is still in operation, and after about three years of hard going, as of February 28th the assets are over the stock value and business since then has been much better.

The Court: Have you some further inquiry?

Mr. Wild: I beg your pardon, your Honor?

The Court: The government is through. Do you want to ask some more questions? [54]

Mr. Wild: Yes, your Honor.

Redirect Examination

Q. (By Mr. Wild): Government counsel asked you if you had protected your wife in this deed of trust. As I understood it you said no, and then you said you had her protected by insurance. Did you also at that time have a will? A. I did.

Q. And was your wife provided for in that will?

(Testimony of Thomas H. Brodhead.)

A. She was. We had our wills drawn at the same time, leaving in case of separate deaths one to the other, and in case of both dying at the same time, in a plane crash, let's say, that everything would go to the children, but Bishop Trust Company was made executor in all three instances. They were identical or tied in to work together.

Q. And another question, you stated a few moments ago two things that you requested the trust company to consider in regard to investments. Did you also request them to purchase a specific stock?

A. No, not that I recall.

A. A publishing company stock?

A. Oh, I will take that back. The answer is yes, and I will explain it. When my mother died she left me some Knight Newspaper stock, and it was a concern that my father was—originally helped get on its feet. Mr. C. L. Knight was [55] his personal friend, and he was advertising manager of the original newspaper. It paid very good dividends and still does. I took that to them and asked them if they would be interested in purchasing that at what I inherited it, the book value, the assessed value, and that it would pay a good dividend for them, and it would be protected in the family for my children. Mr. Benner said he would look it up. He came back later and said no, that they refused to purchase it because of the fact that it was a family corporation and wasn't listed on the stock exchange so that it could be bought and sold at any time, so I still have it.

(Testimony of Thomas H. Brodhead.)

Q. Mr. Brodhead, did you try to tell the trust company how to operate that trust at all?

A. Absolutely not.

Mr. Wild: No further questions.

Mr. Nyquist: Before this witness leaves the stand, your Honor, I would like to offer in evidence as Respondent's Exhibit next in order the consent waiving the period of limitations upon the assessment for the year 1943 signed by Thomas Brodhead and Elizabeth Brodhead.

Mr. Cades: No objection.

The Court: Received in evidence.

The Clerk: Exhibit B.

(The document referred to was received in evidence as Respondent's Exhibit "B".) [56]

The Court: Is that all?

Mr. Nyquist: Yes, your Honor.

The Court: You may step down.

(The witness was excused.)

The Court: We will take a brief recess.

(Recess.)

Mr. Wild: Mrs. Brodhead, will you take the stand, please?

ELIZABETH S. BRODHEAD

Petitioner, called as a witness in her own behalf, being first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name and address for the record?

(Testimony of Elizabeth S. Brodhead.)

The Witness: Elizabeth S. Brodhead. The address is 1468 St. Louis Drive.

Direct Examination

Q. (By Mr. Wild): Are you the Elizabeth S. Brodhead who is co-petitioner in docket number 29391 and docket number 29392? A. I am.

Q. And you are the wife of Thomas Brodhead?

A. Right.

Q. Who was just on the stand? A. Yes.

Q. And do you remember an occasion when you discussed the [57] possibility of the formation of a trust for your children?

A. I can't give you any definite dates for that, but I know that we talked about it at home.

Q. About when was it, if you recollect, sometime in 1943 or when?

A. I don't remember exactly. Perhaps the first of 1943, January perhaps, sometime, I would say, after the first of the year.

Q. Sometime after the first of the year in 1943?

A. 1943, yes.

Q. And what, if anything, resulted from those conversations?

A. I went to see counsel to see whether I could establish a trust for the children. I suppose I wanted a chance to play Santa Claus like my husband.

Q. I can't hear.

A. I went to counsel to see if I could set up a trust for the children as my husband had done. I

(Testimony of Elizabeth S. Brodhead.)

thought perhaps I could play Santa Claus to the children.

Q. Where were you to get the funds which were to be used to start this trust?

A. My husband has always trusted me with his salary, and he said that he would give me \$10,000 if I wished to do it.

Q. I see. And did you discuss the terms of the trust instrument with anybody? [58]

A. I discussed it with the attorney. I don't think that my husband went with me to the attorney's office when I talked to him about it. I talked to my husband at home.

Q. Well now, did you know the terms of your husband's trust?

A. Yes, indeed. I had heard all of that discussed before he established it.

Q. I see. Were there certain differences in the trust that you wanted to create?

A. I felt it would be better if the children didn't get so much money at one time, that is if I could set it up so they would get the results of my trust over a longer period it would be better.

Q. A longer period than what?

A. As it happens, the trustees can disburse the trust, I believe, beginning from the time they are twenty-one, and mine was left so that they would get \$10,000 from the time the youngest was twenty-three, and after five years she would get—I don't mean she got that much. The three children would get what had accumulated when the youngest was

(Testimony of Elizabeth S. Brodhead.)

twenty-three and it could not be more than \$10,000. There was that limit, and when the youngest was twenty-eight another distribution could be made, not to exceed \$10,000, and when the youngest is thirty-three the final distribution would be made, which as it turns out would [59] mean that the eldest would be thirty-eight and one-half. I think she should have wisdom enough to use the money better at that age.

Q. Whose determination and decision were those provisions? A. They were mine.

Q. In that respect the trust differed from the one your husband had set up?

A. The trust differed, yes. The trustee was the same.

Q. The trustees in your trust, did you speak with them?

A. I can't remember whether I spoke to them before it was set up or not. I remember telling Mr. Benner that I hoped he would be the one the Bishop Trust would put in charge of my trust, but I don't think I conferred with him. I went to counsel.

Q. I see, and what about the consideration for the purchase of the partnership interest of the Thomas Brodhead trust? Who was that taken up with? A. You mean the \$10,000?

Q. No. You considered whether or not the trust wanted to purchase or did want to purchase the interest in the special partnership owned by the Thomas Brodhead trust, did you not?

A. I asked my husband, naturally, if it would be with his approval that another trust be set up

(Testimony of Elizabeth S. Brodhead.)

to take over the 50% interest in his company. Naturally I wouldn't want to [60] do that behind his back.

Q. And did you also take that up with the trust company?

A. I can't remember that.

Q. You don't remember that?

A. I don't remember that.

Q. Well now, as a result of that, you executed a deed of trust which is in the record.

A. Right.

Q. And you desired your trust to purchase a half interest in the partnership?

A. That's right.

Q. That had been owned by the Thomas Brodhead trust? A. Yes.

Q. Do you know whether that was accomplished, in fact?

A. I believe it was. The trustees have given me an annual report every year for my information.

Q. Now who was the manager of the Thomas Brodhead Company, the co-partnership?

A. My husband, Thomas H. Brodhead.

Q. And during the period of time after the establishment of your trust to the present, has your husband attempted to dictate to you as to any policies of investment in your trust? A. No.

Q. Have you attempted to dictate any policies of investment [61] to the trustees under your trust?

A. No. I think the same stipulation is in my trust that is in the Thomas Brodhead trust that while I am living I can be notified of the invest-

(Testimony of Elizabeth S. Brodhead.)

ments, I should be notified of the investments. That has occurred only once, last year.

Q. Now do you know whether the Elizabeth Brodhead trust has substantial assets at the present time?

A. Yes, the last statement that I saw was favorable.

Mr. Wild: No further questions.

Cross-Examination

Q. (By Mr. Nyquist): Mrs. Brodhead, you testified on direct examination about getting this impulse to play Santa Claus and setting up a trust for your children. Did you ever set up any trusts prior to that time? A. No, I never had.

Q. Have you set up any since? A. No.

Q. Well, will you explain just what the circumstances were that led to your getting this impulse right at that time?

A. As has been shown before, the arrangements whereby the Thomas Broadhead trust was set up meant that we perhaps were going to lose everything that he had hoped to give the children, and it seemed to me that by a perfectly legal and correct procedure I could not take away anything, that [62] had been given to them, but to increase what had been given to them.

Q. Where did you get this information from, Mr. Brodhead or whom?

A. Probably some from him. Mr. Glueck sometimes came to the house, and any men that came to

(Testimony of Elizabeth S. Brodhead.)

the house would discuss business, so I would hear it from probably several people.

Q. Well, how did the first action start when it came down to creating this trust, the decision to create it? Did you figure out the idea of setting up another trust?

A. I went to Mr. Cades and asked whether I could do it, how I could do it.

Q. You mean you had the idea of setting up the trust first and then you went to Mr. Cades?

A. Well, yes, I wouldn't go to him unless I had the idea.

Q. Where did you get the idea?

A. I discussed—probably came partly from my husband and partly from any other men that had been talking about the problem.

Q. You had been talking about it with your husband?

A. Yes, we talk business a great deal.

Mr. Nyquist: Your Honor, I wish to introduce at this time the gift tax return of Elizabeth Brodhead for 1943 as Respondent's Exhibit next in order.

The Court: It will be received. [63]

The Clerk Exhibit C.

(The document referred to was received in evidence and marked Respondent's Exhibit "C".)

Q. (By Mr. Nyquist): Mrs. Brodhead, I show you Exhibit "C" which is a gift tax return for the calendar year 1943, which is signed by you and

(Testimony of Elizabeth S. Brodhead.)

filed with the Collector on March 1, 1944. Now turning over to the reverse side of this is a description of gift, and under the printed words description of gift and donee's name and address there are typed these words, "To Mortimer Glueck and Bishop Trust Company, Limited, trustees under deed of trust of Elizabeth S. Brodhead dated February 28, 1943," and the address is shown, "Gift of cash to purchase capital interest of special partner in T. H. Broadhead Company". The date of gift is February 28, 1943, and the value is shown as \$10,000. Now I am asking you do you recall the occasion of that gift, and tell us just what form that \$10,000 took, whether it was——

A. You know, I think it was a check.

Q. You think it was a check?

A. I think it is the only time I have had a check of that value in my hands. That's why I feel that way.

Q. Do you recall definitely whether it was a check or a note?

A. No, I do not.

Q. At the time you created the Elizabeth Brodhead trust, did you carefully consider the provisions that appear in the trust instrument?

A. Yes indeed, I read it many times.

Q. And you have stressed in your direct examination the importance you attached to the difference in the dates upon which the children could receive any distributions from the trust. Did you consider it quite important that they not receive

(Testimony of Elizabeth S. Brodhead.)

their distributions before they reached the ages that are mentioned in the trust instrument?

A. In Mr. Brodhead's trust provision is made for their maintenance, I think, so that was covered fully, I thought, in his trust, and this is cash which they will get as adults.

Q. But my question is did you consider it quite important that they not receive any distribution until they attained the ages that were mentioned in the instruments? A. Yes, I do.

Q. Well then, will you explain just why you put in the provision that the trustee may terminate the trust at any time it seems best for him after the trust ceases to be a special partner in the T. H. Brodhead Company?

A. If my husband should die, the partnership would be dissolved, wouldn't it? Q. Yes.

A. And therefore the trust company would be able to dissolve the partnership and take their share and turn his remainder to me. Wouldn't that be the reason for it?

Q. I am asking you the reason for it.

A. I think that would be a time when it would be necessary for a terminus to be put on it.

Q. You say that you put that in because you wanted the trust to terminate in the event of the death of your husband?

A. Not necessarily that the trust would terminate, but that the business might have to be sold. I wouldn't feel myself capable of running his business.

(Testimony of Elizabeth S. Brodhead.)

Q. But I am asking you why you put in the provision that the trust could terminate?

A. My father is a lawyer, and I believe that all the legal angles should be covered from the beginning if possible, to avoid difficulty later on.

Q. I still ask why you think the trust should terminate?

A. I don't think it should terminate at all. I think it is in very good hands.

Q. Why did you put in a provision allowing the trust to terminate in the event the partnership should terminate?

A. My opinion today?

Q. I am asking you your reason at that time.

A. I can't tell you what my definite feeling at that moment was.

The Court: Where is that provision?

Mr. Nyquist: That is at the end of paragraph D, your Honor, in Exhibit 5.

The Court: Is there a provision in this trust saying what will be done in that event?

Mr. Nyquist: Yes, in the event of the termination of the trust, the instrument provides that the trustee may pay the corpus and income to the parents of any minor beneficiaries.

The Court: To whom?

Mr. Nyquist: To the parents of any minor beneficiaries.

The Witness: I doubt that.

Mr. Nyquist: That appears in most of these, and I think it appears in this.

The Witness: I believe that is not in it. I be-

(Testimony of Elizabeth S. Brodhead.)

lieve it says the money shall be divided among the children and in case the children all die the property shall revert to the next legal heirs, but excluding the grantor and her husband.

Mr. Nyquist: I read from Paragraph J, your Honor, "If any person entitled to receive any of the income or capital of the trust estate shall be a minor, the trustee may pay the share of income and capital to which said minor is entitled to either parent," and so forth.

The Court: What I was inquiring primarily about is this: Is there a provision in this instrument that the [67] trust terminates at any time that the partnership terminate?

Mr. Cades: No, there isn't.

The Court: What does that provision mean that counsel read?

Mr. Cades: It provides that the trustee may terminate the partnership within one year after the partnership ceases to be a partner.

The Court: After the trust ceases to be?

Mr. Cades: After the trust ceases to be. The reason for that, if the Court will take my statement on the matter, is that the trust company insisted on that, because it was the only asset of the trust, and they did not know whether the assets would be of any significance and they wanted an opportunity to get out of what might be a non-profitable trust if the property in the trust didn't amount to anything.

The Court: Well, the proviso at the end of that

(Testimony of Elizabeth S. Brodhead.)

paragraph D says this, "Provided, however, that if not terminated prior thereto, the trustees may determine this trust at any time, but not more than one year, which to the trustees may seem best after the trust shall cease to be a special partner in the partnership known as the T. H. Brodhead Company". What does that mean?

Mr. Cades: That means that in the event that the trust shall cease to be a partner in the special partnership [68] the trustees have a one-year period within which to determine whether the trust shall continue or shall not continue.

The Court: But suppose they decide it shall not continue. What happens? It seems an odd provision to me, because they might sell an interest in the partnership and invest it in something else. I don't quite know why they have that.

Mr. Cades: In the event of the termination at any time, then the trustees are required to set over all the property to the children of the settlor then surviving the lawful issue of any of said children, or there being none then to those persons other than the settlor and Thomas Brodhead, husband of the settlor, who would be the heirs at law, of the last surviving of the settlor, under the statutes of the Territory of Hawaii in force and effect at the time of her death.

Mr. Nyquist: But in that connection, Provision J would come into effect, your Honor, which would allow the trustees to make the payments to the parents of any minor beneficiaries.

(Testimony of Elizabeth S. Brodhead.)

Mr. Cades: That is the usual law in the Territory, that the parents are the natural guardian, and payments may be made in any event. It is merely not on their own right; it is just the right to receive on behalf of the minor children. [69].

The Court: As a fiduciary?

Mr. Cades: That's right.

Q. (By Mr. Nyquist): Mrs. Brodhead, have you ever made a study of the investment market?

A. No, I took the Bishop Trust Company's course in finance, and they taught us to go to experts.

Mr. Wild: How long ago was that?

The Witness: That was last fall, but I believed it a long time before that.

Q. (By Mr. Nyquist): Then in approving any recommendations that were submitted to you for investments, did you make any independent decision of your own? A. No, purely technical matters.

Q. You mean you exercised no independent judgment in the matter?

A. No; as a matter of fact, I lost the letter and they had to phone me to send it back to them.

Q. Did you direct them?

A. No, I read the letter, and I noticed they were diversified. I believe it was five or six different items that they got at that time.

Mr. Nyquist: No further questions, your Honor.

Redirect Examination

Q. (By Mr. Wild): You had known Mr. Mor-

(Testimony of Elizabeth S. Brodhead.)

timer Glueck, the other trustee, [70] for some time?

A. Yes. Mr. Brodhead was here when I came over in 1938 to be married. I had known him on the mainland. I came over at that time, and I met Mr. Glueck probably in July, 1938, and I have always respected his judgment a great deal.

Mr. Wild: No further questions.

The Court: Step down, please.

(The witness was excused.)

Mr. Wild: Mr. Glueck, will you take the stand?

MORTIMER J. GLUECK

called as a witness in behalf of Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name and address.

The Witness: Mortimer J. Glueck, 3189 Diamond Head Road, Honolulu, T. H.

Direct Examination

Q. (By Mr. Wild): Mr. Glueck, how long have you known Thomas Brodhead?

A. Since 1935, I believe, June of 1935.

Q. And during some period of that time, about when did you perform certain services for him?

A. Well, starting with that time Mr. Brodhead was just starting a business, practically a one-man business at that time, and I believe I started keeping his books, and I continued to do so in setting up his office and advising [71] him, well, right up to the present day.

Q. Well, do you keep his books now?

A. No, I advise him, but I do not keep his books.

(Testimony of Mortimer J. Glueck.)

Q. About when did you tell him that you would have to cease keeping his books?

A. I believe it was in the early part of 1942 when the war started. I went in as a volunteer in the military governor's office. I was working there all day and trying to do my business at night. And I was also in a military organization down here, a civilian military organization, and I just didn't have any more time. My business was expanding as well. I told him I thought it was wise to get a public accountant who would devote their time and not depend on my occasional assistance as the thing progressed.

Q. What other things were covered in your discussion with him at that time?

A. Just before the start of the war Mr. Brodhead's business began to build up. Prior to that time it was in its embryonic stages and gradually was building up, and I had discussed the question of setting up something so that in case of his death his children and his wife would have a continuing business. After the war started, Mr. Brodhead was rather obsessed with the fear of death, not the fear of death—let me put it this way— His father and grandfather both died as young men. Mr. Brodhead was then at that time [72] a year or two older, I believe, than his father or grandfather at the time of their death, and naturally the conditions here in Hawaii in early 1942 was not conducive to a feeling of long life, and he felt that there was a possibility he would not live too long in view of that. So we discussed the question of setting up a trust

(Testimony of Mortimer J. Glueck.)

and setting this trust up as a partnership so that in case he died the special partner could become a general partner and continue the business. And that was the point that we discussed with Mr. Cades when we went to him the first time in establishing the trust.

Q. Whose idea was the creation of this trust?

A. I believe it was my advice.

Q. Was that prior or subsequent to the time you saw Mr. Cades?

A. Oh, some time prior. I had a friend of mine, not a friend of mine, a fellow worker in 1928 who had at one time had a lot of money and went through it very rapidly, but some time during the course of that period he had set up an irrevocable trust for the benefit of his children, and I had always remembered how well he felt because despite the fact he didn't have a dime, at least his children's welfare was taken care of, and that was one point I had stressed to Mr. Brodhead.

Q. Now had you discussed with him any part that you might [73] play if a trust were set up?

A. No, I had not.

Q. You did not?

A. Whether if I were trustee?

Q. Yes, whether you would be a trustee or not.

A. Yes; sorry, I didn't understand.

Q. How had that come about?

A. He asked me whether I would be trustee, and I told him yes, and that if I were trustee in case of his death then I would be in a position with the

(Testimony of Mortimer J. Glueck.)

knowledge I had of his business to manage his business as the special partner.

Q. And was there to be another trustee? How did that evolve?

A. I recommended to Mr. Brodhead that a trust company be appointed as trustee. I am a few years younger than Mr. Brodhead, but I am still approximately his age, and my chances of surviving him was not considerable, and I thought it was unreliable to have an individual as a trustee.

Q. I see, and as a result of these conversations this Thomas H. Brodhead trust was set up and the partnership that is in the stipulation were all set up and operating? A. That's right.

Q. And do you know who was the manager of the partnership business?

A. The partnership has been managed by Mr. Brodhead. [74]

Q. During that period of time after the partnership was started had Mr. Brodhead consulted frequently or infrequently with you?

A. Well, particularly during the war years, very frequently.

Q. Now has Mr. Brodhead any control over your investment policies at all, any practical way of controlling your investment policies? A. As trustee?

Q. Co-trustee, yes. A. No.

Q. Do you feel under obligation to do for him exactly what he wants you to do?

A. No. On the contrary, I feel as a trustee under this trust deed my obligations are to the trust and

(Testimony of Mortimer J. Glueck.)

not to Mr. Brodhead, because it was clearly understood at the time the trust was signed that he was signing an irrevocable trust. He had nothing more to do with it.

Q. You were also a trustee, Mr. Glueck, of the Elizabeth S. Brodhead trust, I believe.

A. That is correct.

Q. And did you participate in the discussions that occurred prior to the time that that trust was set up?

A. I believe I did. I don't recall too well. The trust was set up following pretty much the same provisions as the original trust with a few exceptions that Mrs. Brodhead [75] requested, and I believe I attended one or two conferences with Mr. Cades on that.

Q. Do you have any clear recollection of what occurred at that time?

A. Not too clearly, no, sir.

Q. Not too clearly. Now during the intervening years up to the present time in the administration of the Elizabeth S. Brodhead trust have you had frequent consultations with the Bishop Trust Company, your co-trustee?

A. Yes, they do not take any action without giving me a letter and getting my signature consenting to that particular action, whether it be investment or what, and in addition to that, I am a personal friend of Mr. Benner, and I see him possibly at least every two or three weeks.

(Testimony of Mortimer J. Glueck.)

Q. And that same thing is true as co-trustee under the Thomas Brodhead trust?

A. That is correct.

Q. And in the administration of those two trusts with the Bishop Trust Company, do you feel that either of the settlors has any control over your actions as trustee? A. Absolutely not.

Mr. Wild: No further questions.

Cross Examination

Q. (By Mr. Nyquist): Mr. Glueck, have you ever had a legal education? [76]

A. Other than business law in college.

Q. As I understood your testimony on direct examination, you said the idea of setting up these trusts was your idea. A. That is correct.

Q. What was your reason for making the trust a limited partner?

A. Well, under the law as I believe—now I am not an attorney, so probably cannot answer this correctly—but this is my interpretation of the law. A limited partner, a special partner had a limited liability under a partnership. A general partner had an unlimited liability, and we didn't feel the trust should go into anything where they had an unlimited liability.

Q. Well, you say it was your suggestion that the trust be a limited partner.

A. May I correct you? It was my suggestion that the trust be a partner. The legal details were worked out by counsel, not by myself.

(Testimony of Mortimer J. Glueck.)

Q. But as I understand you, you say your purpose was so that you would be in a position to manage, take over the management of the business in the event of the death of Mr. Brodhead.

A. Well, the Bishop Trust Company and myself as co-trustees, yes.

Q. Did you study over the terms of the trust and the partnership agreement before they were signed? [77]

A. Yes, sir.

Q. Did you realize that the trust was a limited partner?

A. Oh, yes.

Q. Did you realize that the trust would remain a limited partner after the death of Mr. Brodhead?

A. Well, I believe there was some way of the trust assuming, I believe under the Territorial law, by merely taking action they become a general partner. The minute a special partner manages a business or takes any management steps, he becomes a general partner.

Q. That is your understanding of the Territorial law?

A. That was my understanding of the law, yes, sir.

Q. Was it your understanding it would become a general partner not only for the purpose of liabilities but for the purpose of assuming management powers?

A. That was my interpretation, but I am not a lawyer.

Q. It was your belief at the time that after the death of Mr. Brodhead the trust company would

(Testimony of Mortimer J. Glueck.)

be—the trust would be able to take active management of the business, is that correct?

A. That was the intent.

Q. Did you receive copies, as trustee, of either of these trusts? A. No.

Q. You stated that you regarded your obligations as being [78] to the trust and not to Mr. and Mrs. Brodhead. Did you consent to the sale by the Thomas Brodhead trust of its share in the partnership to the Elizabeth Brodhead trust? A. Yes.

Q. As trustee of the Thomas Brodhead trust, did you not regard your duty as to the beneficiaries of that trust? A. I do.

Q. Did you believe that after the sale of the partnership interest that you would be able to invest the trust corpus that remained in investments that would be as profitable to the trust as the partnership interest was?

A. Well, as I understood at the time, if we did not consent to the sale——

Q. I am asking you. Will you answer my question?

Mr. Wild: Let him answer.

The Witness: I am trying to answer, if I may.

The Court: You answer it and then explain it. Read the question, please.

(The question was read by the reporter.)

A. No, and may I explain that, your Honor?

The Court: Yes.

The Witness: As I understood at the time if we did not consent to the sale and the transfer from

(Testimony of Mortimer J. Glueck.)

the Thomas Brodhead to the Elizabeth Brodhead trust, that Thomas Brodhead would not be able to do anything else but dissolve [79] the partnership. Therefore, we would have no prospect of reinvesting in the partnership. Since my obligations are to the beneficiaries of the trust deed and they were to be the same under the Elizabeth Brodhead trust, I felt that I was doing my duty in consenting to the transfer.

Q. You mentioned the possibility of dissolution of the partnership. Would that have been a serious blow if that had happened?

A. Well, yes. The partnership at that time was making very very fine returns on their investment, and as I understood it at the time, the accountants explained Mr. Brodhead had to pay the full income tax of the partnership and only receive half of it. He actually would be paying out more than he was receiving and therefore could not continue.

Q. Well then, your purpose in consenting to the sale of the partnership interest to the second trust was to relieve Mr. Brodhead of his unbearable income tax burden, is that correct?

A. My interest was primarily in the benefactors under the trust deed. We wanted to retain in some way a very profitable investment.

Mr. Wild: Did you mean benefactors or beneficiaries?

The Witness: I think it is beneficiaries.

Mr. Nyquist: I have no further questions.

Mr. Wild: That's all. [80]

The Court: Step down.

(The witness was excused.)

Mr. Wild: Mr. Benner, will you take the stand?

EDWIN BENNER JR.

called as a witness in behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: State your name and address, please.

The Witness: Edwin Benner, Jr., 4473 Aukai Street, Honolulu, T. H.

Mr. Wild: Government counsel are willing to stipulate the first eleven questions and answers, including the Court's questions of Edwin Benner's direct testimony in Docket number 24081 and 24082 may be written and taken as evidence in this case to save time. That is the preliminary questioning.

The Court: Very well.

(The portion of the transcript stipulated to above is quoted as follows):

Direct Examination

Q. (By Mr. Wild): What is your position, Mr. Benner?

A. I am Vice-president and Secretary of the Bishop Trust Company, Limited, and in charge of the trust department.

Q. How long have you been in charge of the trust department?

A. Since the spring of 1946. [81]

Q. Prior to that time what was your position?

(Testimony of Edwin Benner Jr.)

A. I was a trust officer of Bishop Trust Company.

Q. And for how long?

A. I joined the trust company in 1934, and I have been in the Trust department at all times.

Q. I take it that your active business life, so far as your own participation is concerned since 1931 has been with Bishop Trust Company, Limited?

A. That's right.

Q. What was the Bishop Trust Company's capital in 1940 and 1941, if you recollect?

A. It was approximately \$1,200,000 with a surplus of a like amount.

Q. And what type of business did it conduct at that time?

A. It conducted a trust company business here in the Territory. Banks do not do trust business and trust companies do not do banking business, and so during that entire time it was operated strictly as a professional fiduciary, with side issues such as insurance, real estate sales and brokerage, but its main business is administration of estates, trusts, guardianships, agency accounts, acting as corporate trustee of all sorts and types, transfer agents, that type of business.

Q. In one fiduciary capacity or another do you have as part of your duties the management of various types of properties?

A. Yes, indeed.

Q. You might explain that.

A. The normal trust or estate that we handle, of course, consists primarily of stocks and bonds

(Testimony of Edwin Benner Jr.)

or ownerships in real estate, but very often we have the problem of the administration of proprietorships or own the control or total outstanding shares of businesses, and these change year for year as the estates are probated and closed out. Some of our trusts have operated business for many years, though. I can give you a few examples.

Q. I wish you would give me some examples of business that you have operated in a fiduciary capacity.

A. We have just closed up an estate that has as its principal asset the controlling interest in a small structural steel company here in town with business operating right straight along. Our officer in charge was necessarily right on the job sometimes in the office, and so forth. We do own the controlling interest, through one of our fiduciary accounts, the largest specialty store, McInerny, Limited, that does \$3,000,000 of business each year. I personally am secretary-treasurer of that company and sign all checks, incidentally. I receive daily statements of its sales volume by department all the way through. We have a very active part. [83]

Another business we are handling right now is the Honolulu Tile Business owned by the Worthington Estate. When Mr. Worthington passed away—it was his own business, and it was necessary that we step in and operate it, and not being familiar with that business we had some difficulty for several months and lost money until we were able to get things organized properly with an efficient man-

(Testimony of Edwin Benner Jr.)

ager, and are now pulling it out of the red and are doing very well. Our men in charge of that particular estate consult with me every week about their problems that they have there. They are on the job right along too.

We have handled dairies; we have handled ranches; we have handled ice cream business. In 1944 and 1945 we administered the estate of Frances Wadsworth on the island of Maui. Mrs. Wadsworth at the time of her death was owner of the Maui Soda and Ice Works. That business owned the Coca-Cola franchise on the island of Maui. I made 18 trips to Maui during the year 1945 in connection with that business, taking a very active part in it.

The Court: Is that as executor?

The Witness: We were temporary administrators to start with, the license was issued in our name at first, and then to us as executor.

The Court: And what do you do there, try to liquidate the company as quickly as possible? [84]

The Witness: We operated it just about a year. In 1944 and 1945 were boom years here in the islands because of the tremendous number of service people here, and bottling companies and business of that nature did a tremendous business, and rather than a liquidation program we continued to operate so that we would have a going business to sell to someone. We negotiated a sale eventually to a man who had been the West Coast agent for Coca-Cola. He

(Testimony of Edwin Benner Jr.)

was able to secure the consent of the Coca-Cola Company.

Mr. Nyquist: Objection, your Honor. I don't think there is any occasion to go into other bottling company cases.

The Court: We don't need to go any further on that——

Q. (By Mr. Wild): What other type of business?

A. I just jotted down a few, auto sales——

The Court: I think that is enough.

The Witness: We have the Ford agency in Hilo right now that we are administrating."

(End of stipulated portion of transcript.)

Q. (By Mr. Wild): Mr. Benner, when did you first become acquainted with the problems of the Thomas Brodhead partnership and trust?

A. About the time that the partnership and the trust were created. I was a co-signer with Mr. White on the Thomas Brodhead trust on behalf of the Bishop Trust Company, co-trustee. [85]

Q. Now during the operations of the special partnership, so long as the Thomas Brodhead trust was a special partner, did you have consultations, or were you present at consultations with Mr. Brodhead about the business?

A. It is very possible I did, although that trust was a co-partner for a very short time, Mr. Wild, and I can't specifically answer yes to that question.

Q. Now you were aware of the change, the settlement, for instance, of the Elizabeth Brodhead trust

(Testimony of Edwin Benner Jr.)

and the change in the partnership so that the Elizabeth Brodhead trust acquired a one-half interest as special partner, in the Thomas Brodhead Company, a partnership?

A. Yes, I discussed that.

Q. Now after that period of time did you have conferences and receive information from Thomas Brodhead concerning the Elizabeth Brodhead trust investment in the special partnership?

A. Yes, concerning partnership affairs I did at times.

Q. Were you given accounts from time to time periodically?

A. Yes, we were given annual audits and statements, and then Mr. Brodhead at times would come over with pencilled memoranda to discuss. Those discussions, when he brought over a pencilled memorandum showing the financial condition and the need to borrow funds. I think the bank was the Bank of Hawaii that he used or was using in the partnership, [86] and those are the only written statements that I saw. He never left a written memorandum about finances, the particular picture at that moment. It was just memorandum form. I had many other discussions with him and Mr. White at the same time on leaving the money in the business because of the growing pains that the business was suffering, although my conversations with him initially were on the more limited side, as Mr. White was in charge of the account and I just sat in or pinch hit for him while he was away. I later took

(Testimony of Edwin Benner Jr.)

charge of the account entirely. I think that was some time in 1946, in the summer of 1946.

Q. Was Mr. Mortimer Glueck a co-trustee with Bishop Trust? A. Yes.

Q. Under both trusts? A. That's right.

Q. Did Mr. Mortimer Glueck participate in one or more conversations with yourself and Mr. Brodhead concerning the affairs of the special partnership?

A. I recall several joint conversations with Mr. Glueck and Mr. Brodhead and myself at my desk, and others when we were sitting at Mr. White's desk where all four of us were present. Mr. Glueck's office for a great deal of this period of time was on the third floor of our building, and it was very handy for him to step downstairs to be with us.

Q. Did Mr. Thomas Brodhead attempt to dominate the investment policies of the trustees under the Thomas Brodhead trust?

A. No, he didn't. He did, as he stated on the stand a few moments ago, he made a request that we keep part of the funds in government bonds, and there was no objection to that because that is generally our policy in any type of trusts, and the other case was his suggestion that we purchase for the account of the Thomas Brodhead trust some sixty-odd shares of the Knight Newspaper. I have the name here. I would like to read it into the record, Knight's Newspapers, Incorporated. The value involved was almost \$25,000. The corpus of the trust at that time, including investment income, was about

(Testimony of Edwin Benner Jr.)

\$78,000. I didn't turn Mr. Brodhead down right off though, but I think he wasn't very encouraged when he made the suggestion, and it was referred to our investment research department for examination. Through the American Trust Company they contacted the Northern Trust Company at Chicago who gave us a report on this company.

Q. As a result of all that, did you accede to his request?

A. No, we very definitely turned it down as an unsound type, or undesirable type of investment trust.

Q. Now, Mr. Benner, during the period of time that the Thomas Brodhead trust was set up, at that time or thereabouts when the trust became a special partner in the partnership, was Bishop Trust Company named in any fiduciary capacity in [88] Mr. Brodhead's will?

A. We received a sealed envelope——

Mr. Nyquist: Objection, your Honor. The contents of Mr. Brodhead's will is a matter for the best evidence rule. It can best be proved by producing the will, and is not a subject for oral testimony.

Mr. Wild: If it is on the ground of the best evidence rule he is objecting, I haven't got it here, your Honor.

The Court: Sustained.

Q. (By Mr. Wild): Were you approached by Mr. Brodhead or by the trust company to ascer-

(Testimony of Edwin Benner Jr.)

tain whether they would be receptive to being named as executor in his will?

A. I have no personal knowledge.

Mr. Wild: No further examination.

The Court: Any questions?

Mr. Nyquist: Yes, your Honor.

Cross Examination

Q. (By Mr. Nyquist): Mr. Benner, you have given some testimony on direct examination about investments made by each of these trusts and about the consulting with the settlors about the investments. Did you, for example, in making an investment for the Thomas Brodhead trust, would you always secure the approval of Mr. Brodhead before making an investment?

A. Well, of course, the original investment was indicated [89] in the trust instrument. Then the sale of that investment, that interest to the Elizabeth Brodhead trust, he was aware of and approved. Then I think our first investment was in— Well, I would answer yes to your question.

Q. And on the Elizabeth Brodhead trust did you discuss with Mr. Brodhead the investments of that trust?

A. No, he didn't have anything to do with it.

Q. Did Mrs. Brodhead signify her approval on any of those investments before they were made?

A. Yes. We have only had two investment problems there. That was the investment of the \$40,000 of surplus income that was in Brodhead Company

(Testimony of Edwin Benner Jr.)

in which we formed the corporation, the Brodhead Company, Limited, and then later a distribution from Ace Distributors to the trust, and we went through our formality of selecting and recommending, and she acquiesced.

Q. You have testified concerning conferences that you have had with Mr. Brodhead and possibly with the co-trustee concerning the conduct of the business. Did those conversations run primarily toward the financing or the financial end of the business operations?

A. Primarily so, in the taking on of new lines and things of that sort. I mean why he wanted to expand and why it was essential. Mr. Brodhead, frankly, felt he had a business that was really almost beyond him to handle because of the [90] tremendous increase in volume, and he was nervous about its administration and came in to talk with us. I think he was in our office very frequently. By that I mean every few weeks.

Q. Did you usually have to make specific requests to Mr. Brodhead to secure payments from the partnership which might be needed for the conduct of the trust operations?

A. That's right. When we needed funds we would phone him or write him a note, and he would distribute as requested.

Q. During the conduct of the operations of the business as a partnership, during that period of time did you generally have to make requests for such payments?

(Testimony of Edwin Benner Jr.)

A. Yes; to be frank, Mr. Brodhead was too engrossed in other things to think of paying any money over to us without asking for it.

Q. Was that one of these things you discussed in these financial discussions with him?

A. No, I don't think we had any discussions as to making him pay. We are fairly automatic in our requests. His coming in to discuss things with us did not concern non-payment of the funds.

Q. Did you ever tell or advise Mr. Brodhead how much salary he should draw from the business?

A. No, I was always aware of it. I think Mr. White was too. We discussed it. [91]

Q. But the decision was made by the general partner? A. That's right.

Q. Were you consulted about the creation of the Elizabeth Brodhead trust?

A. Not personally by Mrs. Brodhead or by Mr. Cades or Mr. Glueck. I discussed it with Mr. White in our office after apparently he had been approached, and we discussed the problem that had developed through this tax decision, and the best way that it would be worked out and of the proposal made. Where the proposal came from, I personally don't know.

Q. Do you know at the time the Elizabeth Brodhead trust was created whether \$10,000 in cash was paid to the trustee?

A. From my examination of our records this morning, it appeared to me that no check was tendered. From our records it was apparently set up

(Testimony of Edwin Benner Jr.)

by a journal entry. I found that journal, as a matter of fact, and saw it. There was an indication of cash, but I think that was just to show that that tied in with the trust instrument to get the detailed books set up, but I don't think we actually ever received a check for it.

Q. And after the Thomas Brodhead trust had made the sale of its interest to the Elizabeth Brodhead trust, can you tell us what it received in the way of consideration, what form the consideration took? [92]

A. Well, it was part of this same series of journal entries, the one I referred to just now, the \$40,000 investment that the Thomas Brodhead trust had had in the partnership, as a result of these journal entries they became these two things. They became a note of \$30,000 from the Elizabeth Brodhead trust and a \$10,000 note from the Thomas Brodhead company, the partnership. That was the \$40,000 of assets we carried on our books then as a result of that, and the partnership interest disappeared as an asset of the Thomas Brodhead trust.

Q. Did you consider that these notes receivable that the Thomas Brodhead trust received had value substantially equal to the partnership interest which it sold?

A. We were satisfied on what transactions took place from our examination and discussion.

Q. But my question specifically is did you consider the interest in the going business of the Thomas Brodhead partnership equal in value to one \$10,000

(Testimony of Edwin Benner Jr.)

note of the partnership and the other \$30,000 note of the trust whose only asset was an interest in the partnership?

A. Yes, not any more than that, though.

Q. How much income did you anticipate receiving from these notes receivable?

A. It was stated in the notes. I have forgotten the amount, but materially less, maybe three or four per cent. [93]

Q. Three or four per cent of the total of \$40,000?

A. Yes.

Q. Which would be about how much?

A. I think 3% of \$40,000 is \$1,200 a year.

Q. And do you recall how much income——

Mr. Wild: Isn't that note in the record? It is stipulated. I think it is 5%.

Q. (By Mr. Nyquist): Assuming it to be 5% and the interest on \$40,000 being \$2,000, was that substantially less than the income the trust had received from the partnership during the preceding year? A. Yes.

Q. Do you recall approximately how much the income was?

A. We hadn't operated an entire year, as I recall, and we received, I think the record will show, \$38,000 or something like that. I think that is about the amount.

Q. And you consider an investment that produces \$38,000 in part of a year as being substantially the equivalent in value of an investment that will produce \$2,000 in a full year?

(Testimony of Edwin Benner Jr.)

A. I might answer that yes and no. We have a lot in this picture.

Q. There are a lot of qualifications to that, I suppose. Would you like to offer an explanation?

A. I would, because I wouldn't want you to think a trust company just drops good assets. We were confronted with a [94] problem, very frankly, from our standpoint and our discussion in the office, of losing completely an interest in a partnership that we were holding for the benefit of certain minor children, or the alternative of selling that partnership interest to another entity which was being formed by still another party for the benefit of these same minor children, and we thought that it was the best interest, without any qualification, to go ahead with the plan as it was worked out.

Q. Then you would not have agreed to such a plan if the beneficiaries had not been identical in the two trusts, is that true? A. That is true.

Q. You spoke about one investment that was suggested by Mr. Brodhead, I believe Knight Newspaper, and upon investigation you decided that it was not an advisable investment. A. Yes.

Q. Did you then discuss the matter further with Mr. Brodhead? A. I told him of our decision.

Q. Did he agree with that decision?

A. He accepted it.

Mr. Nyquist: That's all, your Honor.

The Court: Is that all? [95]

Mr. Wild: That's all.

The Court: Just step down.

(The witness was excused.)

Mr. Wild: Petitioners rest, your Honor.

Mr. Nyquist: Respondent rests, your Honor.

The Court: What about the time for filing briefs in this case? Will it vary a little bit from the last?

Mr. Cades: May we have seventy days for the opening and forty-five and forty-five?

The Court: Mr. Clerk, will you give them the dates?

The Clerk: Petitioners' brief will be due August 29, Respondent's answering brief October 15, and Petitioners' reply November 29.

The Court: Those will be the dates. We will close the record in this case.

(Whereupon, at 12:40 p.m. on Wednesday, June 20, 1951, the hearing was concluded, and an adjournment was taken to 2:00 o'clock p.m., the same date.) [96]

Wednesday, June 27, 1951

Mr. Cades: If your Honor please, may we ask that the Brodhead cases be reopened for the submission of two or three more exhibits which counsel agree should be made a part of the record?

The Court: Very well.

Mr. Cades: We would like to offer in evidence a photostatic copy of the income tax return of Thomas Brodhead for the year 1947.

Mr. Nyquist: No objection.

The Court: It will be received.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 46.)

Mr. Cades: We would also like to offer in evidence the tax return of Elizabeth S. Brodhead for the year 1947.

Mr. Nyquist: No objection, your Honor.

The Court: It will be received.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 47.)

The Court: Anything further?

Mr. Cades: That's all, your Honor.

Mr. Nyquist: Nothing further.

The Court: If there is nothing further, we will adjourn sine die.

(Adjournment sine die.)

[Endorsed]: T.C.U.S. Filed July 18, 1951.

[Endorsed]: No. 13805. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Thomas H. Brodhead and Elizabeth S. Brodhead, Respondents. Transcript of the Record. Petition to Review Decisions of the Tax Court of the United States.

Filed April 13, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13805

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

THOMAS H. BRODHEAD and ELIZABETH S.
BRODHEAD, Respondents.

PETITIONER'S DESIGNATION OF RECORD

The petitioner hereby designates for inclusion in the printed record on appeal the following portions of the typewritten record received by this Court from the Clerk of the Tax Court of the United States in the above-entitled cause:

1. Docket Entries, No. 29,391.
2. Docket Entries, No. 29,392.
3. Petition (with exhibit), No. 29,391.
4. Answer, No. 29,391.
5. Petition (with exhibit), No. 29,392.
6. Answer, No. 29,392.
7. Amendment to Answer, No. 29,392.
8. Reply to Amendment to Answer, No. 29,392.
9. Stipulation of Facts, with Exhibits 1 through 10 and 18 through 24.
10. Transcript of Proceedings, 6-20-51 and 6-27-51, pp. 1, 22 through 97.

11. Findings of Fact and Opinion.
12. Decision, No. 29,391.
13. Decision, No. 29,392.
14. Petition for Review, Nos. 29,391 and 29,392.
15. Statement of Points, Nos. 29,391 and 29,392.
16. This Designation.

Dated: April 28, 1953.

/s/ H. BRIAN HOLLAND,
Assistant Attorney General,
Attorney for Petitioner.

[Endorsed]: Filed April 30, 1953. Paul P. O'Brien,
Clerk.